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Contracting for Success  
Developing Geothermal Resources  
on Military Lands

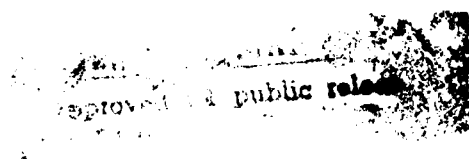
Volume II: Appendices C-Through F



NA301R1

Robert W. Salthouse  
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October 1993

# Contracting for Success Developing Geothermal Resources on Military Lands

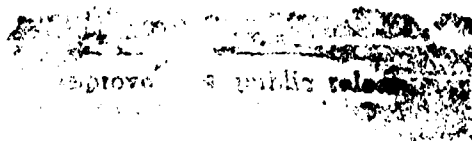
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# Preface

This is Volume II of a two-volume study to identify the management tools needed by DoD to successfully exploit geothermal resources on military lands. Volume I contains the text of the report plus two appendices. Volume II consists of four appendices, each of which contains an example of a legal instrument with potential application to geothermal contracting by DoD.

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## APPENDIX C

# Bureau of Land Management Geothermal Lease

This appendix contains the text of a standard Bureau of Land Management (BLM) lease. The lease is governed by statutory authority granted in the Geothermal Steam Act of 1970, which is separate from the authority underlying the Federal Acquisition Regulation (FAR). The lease presented here does not stand alone, however; it relies on references to BLM regulations, which are not explicitly attached to the lease.

## § 3192.2-4 Oil transporter inspection.

Inspection of oil transporters for documentation required in 43 CFR 3162.7 shall be carried out by State and Indian inspectors only as specified in the agreement.

## § 3192.3 Activities not authorized under cooperative agreements.

## § 3192.3-1 Assessments and penalties.

Imposition of assessments and penalties provided for in 43 CFR 3163.1 and 43 CFR 3163.2 and 3163.3, respectively, including assessments imposed as a result of Notices of Incidents of Non-compliance shall be the responsibility of the BLM.

## § 3192.3-2 Collections.

Collections of assessments and penalties, and collection of any other payments required in this part, shall be the responsibility of the BLM.

## § 3192.4 State and Indian inspectors.

## § 3192.4-1 Selection of inspectors.

(a) States and tribes shall select the inspector candidates to participate in the cooperative agreement program.

(b) Continued inspector participation in the program is contingent upon satisfactory completion of required training, certification, and satisfactory performance of activities carried out under the agreement.

## § 3192.4-2 Training.

(a) BLM shall schedule appropriate classroom and on-the-job training for State and Indian inspectors.

(b) BLM shall be required to train only those inspectors participating in a cooperative agreement.

(c) States and tribes shall ensure that State and Indian inspectors participating in the inspection program attend the appropriate training as required.

(d) Nomination of State and Indian inspectors for training shall be coordinated through the appropriate BLM State or District Office.

## § 3192.4-3 Inspector identification cards.

(a) Inspector identification cards shall be issued by BLM to those State and Indian inspectors who are qual-

fied and are participating in inspection activities under a cooperative agreement. These cards shall identify State and Indian inspectors as representatives of the Secretary of the Interior.

(b) Identification cards remain the property of the Federal Government and shall be surrendered upon request of the authorized officer of BLM.

## § 3193.4-4 Certification.

(a) BLM shall establish standards for certification of State and Indian inspectors no less stringent than those imposed on BLM inspectors.

(b) State and Indian inspectors shall be certified by BLM before conducting independent inspections under this part.

(c) Certification of inspectors shall be contingent upon satisfactory completion of appropriate classroom and on-the-job training.

## § 3193.4-5 Conflict of interest.

(a) State and Indian inspectors shall not inspect the operations of those companies in which they or a member of their immediate family have a direct financial interest.

(b) State and Indian inspectors shall not inspect the operations of those companies in which their immediate supervisors have a direct financial interest.

(c) Information acquired by a State or Indian inspector as a result of his/her participation in a cooperative agreement may not be used for private gain for him/herself or another person by indirect or direct action on his/her part or by counsel, recommendation or suggestion to another person.

## § 3192.5 Termination and reinstatement of agreements.

## § 3192.5-1 Termination.

(a) A cooperative agreement may be terminated at any time by mutual agreement.

(b) A cooperative agreement may be terminated unilaterally by the BLM if it has been determined that the State or tribe has failed to carry out the terms of the agreement, or upon a

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finding that the agreement is no longer needed.

(c) If BLM intends to terminate an agreement under § 3192.5-1(b) because of a failure on the part of the State or tribe to carry out the terms of the agreement, the reason(s) shall be specified in detail in a notice of intent to the State or tribe. The State or tribe may provide a plan for correction. If the corrections proposed by the State or tribe will remedy the failure, the BLM may agree to withdraw the notice of intent. If the State or tribe does not implement corrective action within 30 days of BLM approval of the plan, BLM may provide a subsequent notice of termination. Failure to respond within 30 days to a notice of intent to terminate shall result in termination of the agreement.

## § 3192.5-2 Reinstatement.

(a) If a cooperative agreement has been terminated by mutual consent under § 3192.5-1(a) of this title, the State or Indian tribe may request that the appropriate State Director reinstate the cooperative agreement. The State Director, on receipt of the request, shall determine whether the cooperative agreement should be reinstated, and if so, what modifications, if any, should be made to the agreement.

(b) For cooperative agreements terminated under § 3192.5-1(b) due to deficiencies by the State or tribe in carrying out the provisions of the agreement, the State or tribe shall provide evidence that it has remedied all defects for which the cooperative agreement was terminated and that it is fully capable of resuming the activities to be carried out under the cooperative agreement. The State Director shall determine whether the cooperative agreement should be reinstated, and if so, what modifications, if any, should be made to the agreement.

## Group 3200—Geothermal Resources Leasing

NOTE: The collections of information contained in parts 3200, 3210, 3220, 3240, 3250, and 3260 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance numbers 1004-0034, 1004-0074,

1004.0132, and 1004-0160. The information will be used to maintain an orderly program for leasing, development, and production of Federal geothermal resources. Responses are required to obtain benefits in accordance with the Geothermal Steam Act of 1970, as amended.

Public reporting burden for this information is estimated to average 1.6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Division of Information Resources Management, Bureau of Land Management, 1800 C Street, NW., Premier Building, Room 208, Washington DC 20240; and the Paperwork Reduction Project (1004-0160), Office of Management and Budget, Washington, DC 20503.

(See 54 FR 13885, Apr. 6, 1989 and 55 FR 26443, June 28, 1990)

## PART 3200—GEOTHERMAL RESOURCES LEASING: GENERAL

## Subpart 3200—Geothermal Resources Leasing: General

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3200.0-5 Definitions.

3200.0-6 Use of surface.

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Authority: 30 U.S.C. 1001-1027.

Source: 38 FR 35082, Dec. 21, 1973, unless otherwise noted.

### Subject 3200—Geothermal Resources Legislation: General

#### § 3200.0-3 Authority.

These regulations are issued pursuant to the Geothermal Steam Act of 1970, as amended (84 Stat. 1566; 30 U.S.C. 1001-1025) and rights to develop and utilize geothermal resources in land subject to these regulations may be acquired only in accordance with these regulations.

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[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17366, May 16, 1988]

### § 3200.0-5 Definitions.

As used in Group 3200, the term:

(a) *The Act* means the Geothermal Steam Act of 1970.  
(b) *Secretary* means the Secretary of the Interior.

(c) *Geothermal resources* means geothermal steam and associated geothermal resources which include:

(1) All products of geothermal processes, embracing indigenous steam, hot water and hot brines; (2) steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations; (3) heat or other associated energy found in geothermal formations; and (4) any by-products derived from them.

(d) *Byproduct* means (1) any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium) which are found in solution or in association with geothermal steam and which have a value of less than 75 per centum of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, and (2) commercially demineralized water.

(e) *Party in interest* means a party who is or will be vested with any interest under the lease as defined in paragraph (f) of this section. No one is a sole party in interest with respect to an application, offer, competitive bid or lease in which any other party has an interest in such lease.

(f) *Interest* means any interest whatever in a geothermal lease, including, but not limited to: (1) A record title interest; (2) a working interest; (3) an operating right; (4) an overriding royalty interest or other similar fiduciary payments or arrangements; or (5) options. *Interest* does not include stock ownership, stockholding or stock control in a lease application or offer or in a bid, except for purposes of acreage limitations in § 3201.2 of this title and qualifications of leases in subpart 3202 of this title.

(g) *Director* means the Director of the Bureau of Land Management.

## § 3200.0-5

(h) *Primary term* means the first 10 years in the life of the lease, exclusive of any period of suspension of operations or production, or both.

(i) *Area of operation* means that area of the leased lands which is required for exploration, development and producing operations, and which is delineated on a map or plat which is made a part of the approved plan of operations. It encompasses the area generally needed for wells, flow lines, separators, surge tanks, drill pads, mud pits, workshops, and other such facilities used for on-project geothermal resources field exploration, development and production operations.

(j) *Commercial quantities* means quantities sufficient to provide a return after all variable costs of production have been met.

(k) *Known geothermal resource area* or *KGRA* means an area in which the geology, nearby discoveries, competitive interests, or other indicia would, in the opinion of the Secretary, engender a belief in men who are experienced in the subject matter that the prospects for extraction of geothermal steam or associated geothermal resources are good enough to warrant expenditures of money for that purpose.

(l) *Primarily valuable* means the principal mineral value for which the leasehold is being produced.

(m) *Authorized officer* means any employee of the Bureau of Land Management authorized to perform the duties described in Group 3200.

(n) *Proper BLM office* means the Bureau of Land Management office having jurisdiction over the lands subject to the regulations in Group 3200.

(o) *Anniversary date* means the same day and month in succeeding years as that on which the lease became effective.

(p) *Surface managing agency* means any Federal agency outside of the Department of the Interior which has jurisdiction over the surface overlying Federally-owned minerals.

(q) *Bureau* means the Bureau of Land Management.

(r) *Service* means the Minerals Management Service.

(s) *Transfer* means any conveyance of an interest in a lease by assignment,

sublease or otherwise. This definition includes the terms: *assignment* which means a transfer of all or a portion of the lessee's record title interest in a lease; and *sublease* which means a transfer of a non-record title interest in a lease, i.e., a transfer of operating rights is normally a sublease and a sublease is a subsidiary arrangement between the lessee (sublessor) and the sublessee, but a sublease does not include a transfer of a purely financial interest, such as overriding royalty interest or payment out of production, nor does it affect the relationship imposed by a lease between the lessee(s) and the United States.

(t) *Lessee* means a person or entity holding record title in a lease issued by the United States.

(u) *Operating rights owner* means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

(v) *Operator* means any person or entity, including but not limited to the lessee, operating rights owner, or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(w) *Public domain lands* means lands, including mineral estates, that never left the ownership of the United States, lands that were obtained by the United States in exchange for public domain lands, lands that have reverted to the ownership of the United States through the operation of the public land laws, and other lands specifically identified by the Congress as part of the public domain.

(x) *Produced or utilized in commercial quantities* means the completion of a well producing geothermal resources in commercial quantities or the completion of a well capable of producing geothermal resources in commercial quantities if the authorized officer determines that diligent efforts are being made toward the utilization of the resources.

(y) *Significant thermal features within units of the National Park System* shall include, but not be limited to, the following:

- (1) Mount Rainier National Park;
- (2) Crater Lake National Park;
- (3) Yellowstone National Park;
- (4) John D. Rockefeller, Jr. Memorial Parkway;
- (5) Bering Land Bridge National Preserve;
- (6) Gates of the Arctic National Park and Preserve;
- (7) Katmai National Park;
- (8) Aniakchak National Monument and Preserve;
- (9) Wrangell-St. Elias National Park and Preserve;
- (10) Lake Clark National Park and Preserve;
- (11) Hot Springs National Park; including that portion of the Rio Grande National Wild Scenic River within the boundaries of Big Bend National Park;
- (13) Lassen Volcanic National Park;
- (14) Hawaii Volcanoes National Park;
- (15) Haleakala National Park;
- (16) Lake Mead National Recreation Area; and

(17) Significant thermal features within National Park System Units which the Secretary may, after notice and public comment, add to the list of significant thermal features.

[38 FR 35082, Dec. 2, 1973, as amended at 53 FR 17366, May 16, 1988; 54 FR 13886, Apr. 6, 1989 and 55 FR 26443, June 28, 1990]

#### § 3200.0-6 Use of surface.

(a) A lessee shall be entitled to use for the production, utilization, and conservation of geothermal resources only so much of the surface of the leased Federal lands as is deemed necessary for such purposes. The lessee shall have the right to use so much of the leased lands as may be deemed necessary for a power generation plant or a commercial or industrial facility, and may apply for the right to use so much of other Federal lands as may be deemed necessary for such purposes; however, any use of the leased lands or other Federal lands for a power generation plant or a commercial or

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Industrial facility will be authorized only under a separate permit issued by the appropriate agency for that specific use and subject to all terms and conditions which it may include in that permit. The lessee shall not be entitled to use any mineral materials subject to the Materials Act except as provided by part 3600 of this title.

(b) Operations under other leases or uses on the same lands shall not unreasonably interfere with or endanger operations under leases issued under these regulations nor shall operations under these regulations unreasonably interfere with or endanger operations under any lease, license, claim, permit, or other authorized use pursuant to the provisions of any other act.

[38 FR 35082, Dec. 21, 1973. Redesignated and amended at 53 FR 17366, May 16, 1988]

#### § 3200.1 Competitive and noncompetitive leasing areas.

The authorized officer shall determine the boundaries of known geothermal resource areas. All lands within such boundaries shall only be leased competitively to the highest qualified bidder in accordance with part 3220 of this title. All other lands shall be leased noncompetitively, if at all, to the first qualified offeror in accordance with part 3210 of this title.

(a) In determining whether the geology of an area is of such a nature that the area should be designated as a KGRA, the authorized officer shall use such geologic and technical evidence as he/she deems appropriate, including the following:

- (1) The existence of siliceous sinter and natural geysers;
- (2) The temperature of fumaroles, thermal springs and mud volcanoes;
- (3) The SiO<sub>2</sub> content of spring water;
- (4) The Na/K ratio in spring waters or hot-water systems;
- (5) The existence of volcanoes and calderas of late Tertiary or Quaternary age;
- (6) Conductive heat flows and geothermal gradient;
- (7) The porosity and the permeability of a potential reservoir;
- (8) The results of electrical resistivity surveys;

(9) The results of magnetic, gravity and airborne infrared geophysical surveys; and

(10) The information obtained through other geophysical methods, such as microseismic, seismic ground noise, electromagnetic and telluric surveys if such methods prove to have significant use in evaluation.

(b) For purposes of KGRA classification, a discovery or discoveries shall be considered to be any well deemed by the authorized officer to be capable of producing geothermal resources in commercial quantities. Where the geological structure is not known, nearby shall be considered to be 5 miles or less from any such discovery. Lands nearby a discovery shall be classified as KGRA unless it is determined that the lands are on a different geological structure from the discovery. Where the authorized officer has determined the extent of a structure on which a discovery has been made, all lands in that structural area contributing geothermal resources to that discovery shall be deemed a KGRA regardless of the distance from the discovery.

(c) *Competitive interest* shall exist in the entire area covered by an application for a geothermal lease if at least one-half of the lands covered by the application are also covered by another application which was filed during the same application filing period, whether or not that other application is subsequently withdrawn or rejected. Competitive interest shall not be deemed to exist in the entire area covered by an application because of an overlapping application, if less than one-half of the lands subject to the first application are covered by another single application filed during the same application filing period; however, some of the lands subject to the first application may be determined to be within a KGRA pursuant to the first sentence of this paragraph.

[53 FR 17366, May 16, 1988; 53 FR 31959, Aug. 22, 1988]

#### § 3200.2 Management of Federal minerals from reserved mineral estates.

Where nonmineral public land disposal statutes provided that in conveyances of title all or certain minerals

shall be reserved to the United States together with the right to prospect for, mine and remove the minerals under applicable law and regulations as the Secretary may prescribe, the lease or sale, and administration and management of use of such minerals shall be accomplished under the regulations of Group 3200 of this title. Such mineral estates include, but are not limited to, those that have been or will be reserved under the authorities of the Recreation and Public Purposes Act, as amended (43 U.S.C. 809 *et seq.*), the Small Tract Act of June 1, 1938, as amended (43 U.S.C. 882(b)), and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

(53 FR 17367, May 16, 1988; 53 FR 31667, Aug. 22, 1988)

#### Part 3201—Available Lands; Limitations; Unit Agreements

§ 3201.1 Lands subject to geothermal leasing.

§ 3201.1-1 General.

(a) The Secretary may issue a geothermal lease when he/she determines such issuance would be in the public interest;

(b) Subject to the exceptions listed below, geothermal leases may be issued in combination or separately for (1) lands administered by the Secretary of the Interior; (2) national forest lands or other lands administered by the Department of Agriculture through the Forest Service; and (3) geothermal resources in lands which have been conveyed by the United States subject to a reservation to the United States of geothermal resources.

(c) The authorized officer shall ensure that no lease is issued, extended, renewed, or modified which would result in a significant adverse effect on a significant thermal feature within a unit of the National Park System. If it is determined there is potential for an adverse effect, any lease issued, extended, renewed, or modified shall include stipulations required by law and otherwise deemed necessary to protect such features.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17367, May 16, 1988; 54 FR 13885, Apr. 6, 1989 and 55 FR 26443, June 28, 1990)

§ 3201.1-2 Department of the Interior.

(a) Except as provided in this section, leases may be issued in accordance with the regulations in this part for withdrawn lands, for acquired lands, and for geothermal resources in lands which have passed from Federal ownership subject to a reservation to the United States of the geothermal resources therein where such lands or resources are administered by the Secretary of the Interior.

(b) Notwithstanding any other provision in these regulations, geothermal leases shall not be issued for:

(1) Lands which the Secretary has identified or may identify as being necessary to the performance of his or any other Federal officer's authorized functions, and on which geothermal resource development would in his judgment interfere with such functions; or (2) lands respecting which the Secretary has made or may make a finding that the issuance of geothermal leases would be contrary to the public interest. Upon receipt of an application for a geothermal lease affecting lands withdrawn under section 3 of the Reclamation Act of 1902 (43 U.S.C. 416) or any other appropriate authority, notice thereof and an opportunity to comment thereon shall be given to the head of the agency for whose benefit the withdrawal was made. No geothermal lease affecting lands withdrawn for any agency outside the Department of the Interior shall be leased without the consent of the head of the agency for which the lands are withdrawn. Where leases are issued under part 3210 of this title or part 3220 for lands neighboring such reserved lands, the lessees shall be required to perform such lease operations and take such measures as are prescribed by the Secretary for the protection of the Federal interests therein.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17367, May 16, 1988)

§ 3201.1-3 Department of Agriculture.

Leases for public, withdrawn or acquired lands administered by the Forest Service, may be issued by the Secretary of the Interior only with the consent of, and subject to such terms and conditions as may be prescribed by, the head of that Department to insure adequate utilization of the lands for the purpose for which they were withdrawn or acquired.

§ 3201.1-4 Federal Energy Regulatory Commission.

Leases for lands to which section 24 of the Federal Power Act, as amended (16 U.S.C. 818), is applicable, may be issued by the Secretary of the Interior only with the consent of, and subject to, such terms and conditions as the Federal Energy Regulatory Commission may prescribe to insure adequate utilization of such lands for power and related purposes.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17367, May 16, 1988)

§ 3201.1-5 Patented lands.

Geothermal resources in lands which have passed from Federal ownership subject to a reservation to the United States of geothermal resources therein may be leased under the regulations in this group subject to the provisions in this part and to such terms and conditions as may be prescribed by the authorized officer to insure adequate protection of the patented lands and any improvements thereon.

(38 FR 35082, Dec. 21, 1973, as amended at 48 FR 17044, Apr. 20, 1983)

§ 3201.1-6 Excepted areas.

Leases shall not be issued for lands which are:

(a) Administered under the National Park System;

(b) Within a national recreation area;

(c) In a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, or waterfowl production area, or for lands acquired or reserved for the protection and conservation of fish and wildlife which are designated as rare and endangered species by the

Secretary; or under active consideration for inclusion in categories (a), (b), or (c) as evidenced by the filing of an application for a withdrawal or a proposed withdrawal;

(d) Tribally or individually owned Indian trust or restricted lands, within or without the boundaries of Indian reservations;

(e) Lands for which the Secretary determines that geothermal exploration, development, or utilization is reasonably likely to result in a significant adverse effect on a significant thermal feature within a unit of the National Park System;

(f) Lands within the Island Park Geothermal Area; or

(g) Lands subject to the leasing prohibition provided under Section 43 of the Mineral Leasing Act (30 U.S.C. 226-3) which include:

(1) Lands recommended for wilderness allocation by the surface managing agency;

(2) Lands within Bureau of Land Management wilderness study areas;

(3) Lands designated by Congress as wilderness study areas, except where leasing is specifically allowed to continue by the statute designating the study area; and

(4) Lands within areas allocated for wilderness or further planning in Executive Communication 1504, Ninety-Sixth Congress (House Document numbered 96-119), unless such lands are allocated to uses other than wilderness by a land and resource management plan or have been released to uses other than wilderness by an act of Congress.

(54 FR 13885, Apr. 6, 1989 and 55 FR 26443, June 28, 1990)

§ 3201.2 Acreage limitations.

(a) *Maximum holdings.* No citizen, association, corporation, or governmental unit shall take, hold, own, or control at one time, whether acquired directly from the Secretary or otherwise, any direct or indirect interest in Federal geothermal leases in any one State exceeding 51,200 acres, including leases acquired under the provisions of section 4(a)-(f) of the Act. Nor may any citizen, association, or corporation be permitted to convert mineral leases.

permits, applications therefor, or mining claims pursuant to the provisions of section 4(a)-(f) of the Act into geothermal leases for more than 10,240 acres.

(b) *Computation.* In computing acreage holdings or control, the accountable acreage of a party owning an undivided interest in a lease shall be that party's proportionate part of the total lease acreage. Likewise, the accountable acreage of a party owning an interest in a corporation or association shall be his proportionate part of the corporation's or association's accountable acreage except that no person shall be charged with his pro rata share of any acreage holdings of any association or corporation unless he is the beneficial owner of more than 10 per centum of the stock or other instruments of ownership or control of that association or corporation. Parties owning a royalty, or other interest determined by or payable out of a percentage of production from a lease will be charged with a similar percentage of the total lease acreage. Where the United States owns a present fractional interest in the geothermal resources in the leased lands, only that portion of the total acreage currently owned by the United States shall be charged as acreage holdings. The acreage embraced in a future interest lease shall not be chargeable as acreage holdings until the future interest vests in the United States.

(1) An association shall not be deemed to exist between the parties to a contract for development of leased lands, whether or not coupled with an interest in the lease, nor between co-lessees, but each party to any such contract or each co-lessee will be charged with his proportionate interest in the lease.

(2) Lessees holding acreage in common shall be considered a single entity and cannot hold acreage in excess of the maximum specified in the law for any one lessee.

(c) *Excepted acreage.* Leases committed to any unit or cooperative plan approved or prescribed by the Secretary of the Interior shall not be included in computing accountable acreage. Leases subject to an operating, drilling or development contract approved by

the Secretary pursuant to section 18 of the Act, other than communication or drilling agreements, shall be excepted in determining the accountable acreage of the lessees or operators.

(d) *Excess acreage.* (1) Where, as the result of the termination or contraction of a unit or cooperative plan, or the elimination of a lease from operating, drilling, or development plan, a party holds or controls excess accountable acreage, such party shall have 90 days from such termination or contractions or elimination in which to reduce his holdings to the prescribed limitation.

(2) If any person holding or controlling leases or interests in leases is found to hold accountable acreage in violation of the provisions of this section and of the Act, the last lease or leases or interest or interests acquired by him which created the excess acreage holdings shall be canceled or forfeited in their entirety, even though only part of the acreage in the lease or interest constitutes excess holdings, unless it can be shown to the satisfaction of the Director that the holding or control of the excess acreage is not the result of negligence or willful intent in which event the lease or leases shall be canceled only to the extent of the excess acreage.

(38 FR 35082, Dec. 21, 1973, as amended at 47 FR 5004, Feb. 3, 1982; 48 FR 17044, Apr. 20, 1983; 48 FR 24368, June 1, 1983; 50 FR 38813, Sept. 25, 1985)

#### § 3201.3 Leases within unit areas.

Before issuance of a geothermal lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently but will be required to perform his operations in a manner which the Supervisor

deems to be consistent with the unit operations.

### Subpart 3202—Qualifications of Lessees

#### § 3202.1 Who may hold leases.

Leases may be issued only to: (a) Citizens of the United States who have reached the age of majority; (b) associations of such citizens; (c) corporations organized under the laws of the United States, any state or the District of Columbia; or (d) governmental units, including, without limitation, municipalities. The term "association" includes a partnership.

#### § 3202.2 Proof of qualifications.

Submission of an executed lease application or offer, competitive bid or record title for approval of a transfer of record title or of operating rights (sublease) constitutes certification of compliance with the regulations of this group and the Act. Any party seeking to acquire or already holding a Federal geothermal lease or interest therein may be required by the authorized officer to submit proof that the party is qualified to hold a geothermal lease. Such proof shall be submitted within 30 days after receipt of request.

(48 FR 24368, June 1, 1983, as amended at 53 FR 17367, May 16, 1988)

#### § 3202.2-1 Proof which may be required.

The authorized officer may require:

(a) Evidence that the lessee does not hold acreage in excess of that prescribed in § 3201.2 of this title. A lessee may be additionally required to submit the serial numbers and percent interest held in all leases as of a specified date.

(b) Evidence that the lessee or applicant is a citizen of the United States or, if a corporation or association, that the entity is in compliance with § 3202.1 of this title.

(c) Evidence that the individual executing an application, lease, or transfer of interest on behalf of another party is authorized to act in that capacity. In the case of a guardian or trustee, a copy of the authorizing court order or other legal instrument shall constitute such evidence.

(d) Evidence indicating whether the applicant or lessee is the sole party in interest and, if not, providing the names, addresses, and nature of interests of any other parties.

(e) Evidence showing that the municipality or governmental unit involved is authorized to hold geothermal leases. The evidence shall include a copy of the governing body's resolution authorizing the particular action being taken.

(f) Evidence setting forth the names and addresses of all members or stockholders controlling more than 10 percent of the corporation or association. (48 FR 24368, June 1, 1983)

#### § 3202.2-2 Attorney-in-fact/agent.

An attorney-in-fact or an agent may execute and file an application, offer, competitive bid or transfer of record title or of operating rights (sublease), request for approval of a transfer or other lease-related document.

(53 FR 17367, May 16, 1988)

#### § 3202.2-3 Showing as to sole party in interest.

Each application must indicate whether the applicant is the sole party in interest. Where the applicant is not the sole party in interest, separate statements must be signed by each of the parties and by the applicant setting forth the nature of the agreement between them. All interested parties may be required to furnish evidence of their qualifications upon the written request of the authorized officer.

(38 FR 35082, Dec. 21, 1973. Redesignated and amended at 53 FR 17367, May 16, 1988)

#### § 3202.2-4 Heirs and devisees (estates).

If an applicant or a successful bidder dies before the lease is issued, the lease will be issued to the executor or administrator of the estate if probate of the estate has not been completed, or if probate has been completed, or is not required, to the heirs or devisees, provided there is filed in all cases an application to lease in compliance with the requirements of this section which will be effective as of the effective date of the original application filed by the deceased. If there are any



minor heirs or devisees, the application can only be made by their legal guardian or trustee in his name.

(38 FR 35082, Dec. 21, 1973. Redesignated and amended at 53 FR 17367, May 16, 1988)

#### Subject: 3203—Leasing Terms

§ 3203.1 Primary term, additional term and extensions.

All geothermal leases, including primary term, additional term and extensions, shall be subject to § 3203.1-1(c) of this title. For those leases in effect upon enactment of the Geothermal Steam Act Amendments of 1988 (September 22, 1988), with expiration dates of September 22, 1988 through July 31, 1989, lessees shall be allowed until July 31, 1989, to submit the specified reports and/or applications required under §§ 3203.1-3 and 3203.1-4.

(54 FR 13656, Apr. 6, 1989 and 55 FR 26443, June 28, 1990)

#### § 3203.1-1 Dating of leases.

All geothermal leases shall be considered issued when signed by the authorized officer. Geothermal leases, except future interest leases issued under Subpart 3207 of this title, shall be effective as to the first day of the month following the date the leases are issued. A lease may be made effective on the first day of the month within which it is issued if a written request is made prior to the date of signature of the authorized officer. A renewal lease shall be dated from the termination of the original lease.

(63 FR 17367, May 16, 1988)

#### § 3203.1-2 Primary term.

All leases shall be for a primary term of 10 years.

#### § 3203.1-3 Additional term.

(a) If geothermal resources are produced or utilized in commercial quantities within the primary term or any extended term of a lease, that lease shall continue for so long thereafter as geothermal resources are produced or utilized in commercial quantities or so long thereafter as the operator is making diligent efforts to commence production or utilization of geother-

mal resources in commercial quantities, but in no event shall the lease continue for more than 40 years after the end of the primary term. However, the lessee shall have a preferential right to renew the lease for an additional 40-year term subject to such terms and conditions as the authorized officer deems appropriate, if at the end of the first 40-year term the lands are not needed for another purpose and geothermal resources are being produced or utilized in commercial quantities.

(b) If a lease is not actually producing or utilizing geothermal resources at the end of its primary or extended term, but has a well capable of producing or utilizing geothermal resources in commercial quantities, the operator shall, at least 60 days prior to the anniversary date of the lease, provide the authorized officer a description of diligent efforts completed for the lease year and planned for the following year. Examples of information to be submitted include but are not limited to descriptions of negotiations for geothermal resources and/or electricity sales contracts, marketing arrangements, electrical generating and/or transmission agreements, and operations conducted or planned to better define the geothermal resource.

(38 FR 35082, Dec. 21, 1973, as amended at 54 FR 13886, Apr. 6, 1989 and 55 FR 26443, June 28, 1990)

#### § 3203.1-4 Extensions.

(a) A lease which has been extended by reason of production, or on which geothermal steam has been produced, and which has been determined by the Secretary to be incapable of further commercial production and utilization of geothermal steam may be further extended so long as one or more valuable byproducts are produced in commercial quantities but for not more than 5 years.

(b) Any lease for land on which, or for which under an approved cooperative plan, communitization agreement, or a unit plan of development or operation, actual drilling operations were commenced prior to the end of the primary term and are being diligently prosecuted at that time shall be ex-

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tended for a period of 5 years. Any lease extended pursuant to this section shall subsequently be eligible for an extension under paragraph (c) of this section.

(c) Any lease from which geothermal resources have not been produced or utilized in commercial quantities by the end of the primary term, or by the end of an extension granted under paragraph (b) of this section, may be extended for successive 5-year periods totaling not more than 10 years. In order to obtain such extensions, the operator shall submit a request for lease extension to the authorized officer at least 60 days prior to the end of the primary term of the lease or prior to the end of any period of extension already granted. The request shall:

(1) Include a report documenting that the operator has made bona fide efforts to produce or utilize geothermal resources in commercial quantities given the current economic conditions for marketing geothermal steam including a description of:

(i) Operations conducted during the primary term of the lease and currently in progress to identify and define the geothermal resource on the lease including a summary of the results of those operations;

(ii) Actions taken in support of operations including obtaining permits, conducting environmental studies, meeting permit requirements or other related activities;

(iii) Actions taken during the primary term of the lease and currently in progress to negotiate marketing arrangements, sales contracts, drilling agreements, financing for electrical generation and transmission projects, or other related actions; and

(iv) Current economic factors and conditions which affect the lessee's efforts to produce or utilize geothermal resources in commercial quantities on the lease.

(2) Indicate whether the operator chooses to make payments in lieu of commercial quantities production or to make significant expenditures during the period of extension.

(i) If the operator elects to make payments in lieu of commercial quantities production and the extension is approved, the lease shall be modified

to require that an annual payment in lieu of production be made in the amount specified by the authorized officer, but not less than \$3.00 per acre or fraction thereof, of the lands under lease during an initial extension, or \$6.00 per acre or fraction thereof for a subsequent extension. The actual payment per acre shall be fixed for the period of the extension and shall be made known to the operator, if requested, prior to the operator's petition for extension. Payments shall be made to the authorized officer at the same time as the lease rental is paid. Failure to make payment shall subject the lease to cancellation.

(ii) If the operator elects to make significant expenditures, and the extension is approved, the lease shall be modified to require the operator to make annual expenditures of at least \$15.00 per acre or fraction thereof, of the lands under lease during an initial extension, or \$18.00 per acre or fraction thereof during a subsequent extension. Expenditures made in excess of the minimum required shall be credited to subsequent years within the same period of extension. Expenditures which will qualify as significant expenditures shall be limited to those involving actual drilling operations on the lease, geochemical or geophysical surveys for exploratory or development wells, road or generating facility construction on the lease, architectural or engineering services procured for the design of generating facilities to be located on the lease, and environmental studies required by State or Federal law. To obtain credit towards meeting the significant expenditure requirement, the operator shall submit to the authorized officer a report of expenditures that qualify no later than 60 days after the end of the lease year in which the expenditures were made. Failure to make such expenditures shall subject the lease to cancellation.

(iii) The operator shall not be allowed to change election during a period of extension, but shall continue either to make payments in lieu of production or make significant expenditures until such time as a well is drilled that is capable of producing geothermal resources in commercial

quantities. Within 30 days of receipt of a request for extension, the authorized officer will notify the operator whether the report has been approved or disapproved or will request additional information from the operator if necessary.

(d) Any lease on which there has been a suspension of operations or production, or both, under § 3205.3-§ of this title shall continue in effect for the life of the suspension and, at the end of the suspension, shall be extended for a period equal to that portion of the primary term during which the suspension was in effect.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17367, May 16, 1988; 54 FR 13866, Apr. 6, 1989 and 54 FR 26443, June 29, 1989)

§ 3203.1-5 Segregation of leases on communitization or of contraction of cooperative or unit plan or communitization or drilling agreement.

(a) Any lease committed to any cooperative plan, communitization agreement, drilling agreement, or unit plan, which covers lands within and lands outside the area covered by the plan or agreement, shall be segregated, as of the effective date of that plan or agreement, into separate leases, one covering the lands committed to that plan or agreement and the other as to the lands not so committed. The segregated lease covering the portion of the lands not subject to that plan or agreement shall not be entitled to an extension by reason of the segregation, but the term of the lease of such segregated lands shall be as provided in the original lease.

(b) When only part of the land subject to a lease included in a cooperative plan, a communitization agreement, a drilling agreement, or a unit plan is excluded from that plan or agreement because of the contraction of the area subject to that plan or agreement, the part of the lease which is excluded and the part which remains subject to the plan or agreement shall be segregated into separate leases. The term of the segregated lease composed of the excluded land shall not be extended because of production in commercial quantities or the existence of a producible well on the segregated lease remaining subject

to the cooperative or unit plan or the communitization or drilling agreement or because actual drilling operations were at the time of contraction being conducted on that other lease, but the term of the lease composed of the excluded land shall be as provided in the original lease.

(c) Where all the land subject to a lease included in a cooperative plan, a communitization agreement, a drilling agreement, or a unit plan is excluded from that plan or agreement because of the contraction of the area subject to that plan or agreement, the term of the lease shall not be extended because of production in commercial quantities or the existence of a producible well on the lands remaining subject to the cooperative or unit plan or the communitization or drilling agreement or because actual drilling operations were being conducted on the other lands, but the term of the lease shall be as provided in the original lease.

(d) Contraction of a unit or cooperative plan or a communitization or drilling agreement causing all or part of the land in the lease to be excluded from such plan or agreement shall not serve to extend the term of such lease excluded by reason of the contraction where the 10-year primary term has already expired.

§ 3203.1-6 Conversion to mineral leases or mining claims.

(a) If the byproducts capable of being produced in commercial quantities are leaseable under the Mineral Leasing Act of February 25, 1920 as amended and supplemented (30 U.S.C. sections 181-287), or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. sections 351-359), and the leasehold is primarily valuable for the production thereof, the lessee shall be entitled to convert his geothermal lease to a mineral lease under and subject to all the terms and conditions of the appropriate act, provided the lands and its resources are available for this purpose, upon application at any time before expiration of the lease extension by reason of byproduct production.

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(b) The lessee shall be entitled to locate under the mining laws all minerals which are not leaseable and which would constitute a byproduct if commercial production or utilization of geothermal steam continued. The lessee, to acquire the rights herein granted him, shall complete the location of mining claims within 90 days after the termination of the geothermal lease, provided the lands and its resources are available for location.

(c) Any lease converted under paragraph (a) or (b) of this section affecting lands withdrawn or acquired in aid of a function of a Federal department or agency, including the Department of the Interior, shall be subject to such additional terms and conditions as may be prescribed by that department or agency with respect to the additional operations or effects resulting from such conversion upon the utilization of the lands for the purpose for which they are administered.

(44 FR 12038, Mar. 5, 1979, as amended at 53 FR 17367, May 16, 1988)

§ 3203.3 Consolidation of leases.

Two or more contiguous leases issued to the same lessee may be consolidated if the total combined acreage does not exceed 2,560 acres. Except where a decrease is caused by an irregular subdivision or subdivisions as stated in § 3203.2 of this title.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17368, May 16, 1988)

§ 3203.4 Description of lands.

Applications and nominations shall include a description of the lands sought to be included in a geothermal lease.

(a) *Surveyed lands.* If the lands have been surveyed under the public land rectangular system, each application or nomination shall describe the lands by legal subdivision, section, township, and range.

(b) *Unsurveyed lands.* If the lands have not been so surveyed, each application shall describe the lands by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract, in cardinal directions except where the boundaries of the lands are in irregular form, and connected by courses and distances to an official corner of the public land surveys or to a prominent topographic feature. In Alaska the description of unsurveyed lands must be connected by courses and distances to either an official corner of the public land surveys or to a triangulation station established by any agency of the United States (such as the U.S. Geological Survey, the Coast and Geodetic Survey, or the International Boundary Commission), if the

§ 3203.2 Lease acreage limitation.

(a) A geothermal lease may not embrace more than 2,560 acres in a reasonably compact area, except where a departure is occasioned by an irregular subdivision or subdivisions, entirely within an area of 6 miles square or surveyed or protracted sections in length or width measured in cardinal directions. A lease offer may not exceed 2,560 acres except where the rule of approximation applies.

(b) No lease shall be issued for less than 640 acres, except at the discretion of the Secretary. The Secretary may issue a lease for less than 640 acres where geothermal resources will be utilized for non-electrical purposes.

(c) Where a departure is occasioned by an irregular subdivision, the leased acreage may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added.

(d) The authorized officer may add isolated tracts of more or less than 640 acres in nearby sections, to a lease application where it is determined that such addition is necessary for the proper management of the resource, provided the additional lands shall not

record position thereof is available to the general public.

(c) *Protracted surveys.* When protracted surveys have been approved and the effective date thereof published in the *FEDERAL REGISTER*, each application or nomination for lands shown on such protracted surveys, filed on or after such effective date, shall describe the lands according to the legal subdivision, section, township, and range shown on the approved protracted surveys.

(d) *Unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska.* In lease applications embracing unsurveyed public lands adjacent to tidal waters in southern Louisiana and in Alaska, if the applicant finds it impracticable to furnish a metes and bounds description, as required in paragraph (b) of this section with respect to the water boundary, he may, at his option, extend the boundary of his application into the water a distance sufficient to permit complete enclosure of the water boundary of his application by a series of courses and distances in cardinal directions (the object being to eliminate the necessity of describing the meanders of the water boundary of the public lands included in the application). The description in the lease application shall in all other respects conform to the requirements of paragraph (b) of this section. Such description would not be deemed for any purpose to describe the true water boundaries of the lease, such boundaries in all cases being the ordinary high water mark of the navigable waters. The land boundaries of such overall area shall include only the public lands embraced in the application. The applicant shall agree to pay rental on the full acreage included within the description with the understanding that rights under any lease to be issued on that application will apply only to the areas within that description properly subject to lease under the act, but that the total area described will be considered as the lease acreage for purposes of rental payments, acreage limitations under § 3201.2 of this chapter and the maximum or minimum area to be included in a lease pursuant to § 3203.1-(c) shall not be required to perform diligent exploration.

outline on a current quadrangle sheet published by the U.S. Geological Survey or such other map as will adequately identify the lands described.

§ 3203.5 Diligent exploration.

Each geothermal lease shall include provisions requiring diligent exploration until there is a well(s) capable of commercial production on the leased lands. Diligent exploration means postlease field operations, conducted by the operator, on or related to the leased lands. Diligent exploration operations include, but are not limited to, geochemical surveys, heat flow measurement, core drilling or test drilling of test wells. To qualify as diligent exploration, the results and associated expenditures of operation shall be submitted to the authorized officer in accordance with applicable regulations. In addition, to qualify after the fifth year of the lease, operations shall exceed minimum per acre expenditure in accordance with the following table:

Lease year	Expenditure per acre
1	\$4
2	6
3	8
4	10
5-15	12

All expenditures qualifying as diligent exploration during the first 5 years of a lease, and all expenditures during any subsequent year in excess of the minimum requirement, shall be credited by the authorized officer against the requirement for successive years. However, in lieu of performing the minimum required diligent exploration in any lease year in which a minimum requirement is specified, the lessee may exercise the option of paying an additional rental of \$3 per acre or fraction thereof. Failure to either pay the additional rental or complete the minimum required diligent exploration by the end of a lease year shall subject the lease to cancellation. However, leases extended under § 3203.1-(c) shall not be required to perform diligent exploration.

(48 FR 17044, Apr. 20, 1983, as amended at 53 FR 17368, May 16, 1988; 54 FR 13887, Apr. 6, 1989 and 55 FR 26443, June 28, 1990)

§ 3203.6 Plans of development and operation.

No entry upon the leased lands for purposes other than casual use as defined in § 3209.0-5 of this title will be permitted until either a notice of intent or a plan of operation has been approved.

(a) The operator shall submit a notice of intent in accordance with § 3264.4 of this title prior to entry upon the lands for purposes of conducting exploration operations as defined in § 3209.0-5 of this title.

(b) The operator shall submit a plan of operation pursuant to § 3262.4 of this title, prior to entry upon the leased lands for purposes of drilling exploratory and development wells, including construction of testing and production facilities, except as provided in paragraph (a) of this section. Subsequent well operations shall be conducted under a modified or amended plan of operations as provided in § 3262.4-2 of this title.

(44 FR 12038, Mar. 5, 1979, as amended at 53 FR 17368, May 16, 1988)

§ 3203.7 Reservation to the United States of oil, hydrocarbon gas, and helium.

The United States reserves the ownership of and the right to extract oil, hydrocarbon gas, and helium from all geothermal steam and associated geothermal resources produced from lands leased under the Act. Whenever the right to extract oil, hydrocarbon gas, and helium, from geothermal steam and associated geothermal resources produced from such lands is exercised, it shall be exercised so as to cause no substantial interference with the production of geothermal resources from such lands.

(38 FR 35082, Dec. 21, 1973. Redesignated at 48 FR 17045, Apr. 20, 1983)

§ 3203.8 Compensation for drainage; compensatory royalty.

(a) Upon a determination by the authorized officer that lands owned by the United States are being drained of geothermal resources by wells drilled on adjacent or cornering lands, the au-

thorized officer may execute agreements with the owners of adjacent or cornering lands whereby the United States, or the United States and its lessees, shall be compensated for such drainage, such agreements to be made with the consent of any operating rights owner affected thereby. The precise nature of any agreement will depend on the conditions and circumstances involved in the particular case.

(b) Where land in any lease is being drained of its geothermal resources by a well either on a Federal lease issued at a lower rate of royalty or on land not the property of the United States, the operating rights owner shall drill and produce all wells necessary to protect the leased lands from drainage. In lieu of drilling such wells, the operating rights owner may, with the consent of the authorized officer, pay compensatory royalty in the amount determined in accordance with § 3262.3 of this title.

(38 FR 35082, Dec. 21, 1973. Redesignated at 48 FR 17045, Apr. 20, 1983, and amended at 53 FR 17368, May 16, 1988)

§ 3203.9 Readjustment of terms and conditions.

(a) (1) Except as otherwise provided by law, the terms and conditions of any geothermal lease may be readjusted as determined by the authorized officer at not less than 10-year intervals beginning 10 years after the date the geothermal resource is produced and utilized commercially for any purpose including the generation of electricity.

(2) At such time as the geothermal resource is being commercially produced, the authorized officer shall give notice to the lessee, by written decision, of any proposed readjustment of the terms and conditions of the lease and the nature thereof, and unless the lessee files with the authorized officer an objection to the proposed terms and conditions or relinquishes the lease within 30 days after receipt of such notice, the lessee shall be deemed conclusively to have agreed to such terms and conditions. If the lessee files objections, and agreement cannot be reached between the authorized officer and the lessee within a period of 60 days, the lease may be

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terminated by either party, subject to the provisions of § 3000.4 of this chapter. If the lessee files objections to the proposed readjustment terms and conditions, the existing terms and conditions will remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated. The readjustment of any terms concerning rental and royalty rates will be subject to § 3205.3 of this chapter.

(b) Any readjustment of the terms and conditions of any lease of lands withdrawn or acquired in aid of a function of a Federal department or agency may be made only with the approval of that other agency.

(44 FR 12038, Mar. 5, 1979. Redesignated at 49 FR 17045, Apr. 20, 1983)

## Subpart 3204—Surface Management Requirements; Special Requirements

### § 3204.1 General.

A lessee shall comply with all of the standard lease terms and conditions, any special lease stipulations added by the authorized officer and all Geothermal Resource Operational Orders issued pursuant to 43 CFR 3261.2.

(48 FR 17045, Apr. 20, 1983)

## Subpart 3205—Fees, Rentals and Royalties

### § 3205.1 Payments.

#### § 3205.1-1 Form of remittance.

All remittances shall be by U.S. currency, postal money order or negotiable instrument payable in U.S. currency and shall be made payable to the Department of the Interior—Bureau of Land Management or the Department of the Interior—the Minerals Management Service, as appropriate. In the case of payments made to the Service, such payments may also be made by electronic funds transfer.

(49 FR 11437, Mar. 27, 1984)

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### § 3205.1-2 Where submitted.

(a)(1) All filing fees for lease applications or offers or for applications for approval of an instrument of transfer and all first-year advance rentals and bonuses for leases issued under Group 3200 of this title shall be paid to the proper BLM office.

(2) All second-year and subsequent rentals and deferred bonus amounts payable after the initial payment for leases shall be paid to the Service.

(b) All royalties on producing leases, communized leases in producing well units, unitized leases in producing unit areas, leases on which compensatory royalty is payable and all royalty payments under easements for directional drilling are to be paid to the Service.

(49 FR 11637, Mar. 27, 1984, as amended at 49 FR 39330, Oct. 5, 1984; 53 FR 17368, May 16, 1988)

### § 3205.2 Filing fees.

(a) No filing fee is required for competitive lease applications.

(b) Applications for noncompetitive leases, including future interest leases, shall be accompanied by a nonrefundable filing fee of \$75 for each application.

(c) Applications for approval of a transfer of a lease or any interest therein shall be accompanied by a nonrefundable filing fee of \$50 for each separate transfer.

(d) No filing fee is required for requests or nominations for parcels to be offered for competitive sale.

(53 FR 17368, May 16, 1988)

### § 3205.3 Rentals and royalties.

#### § 3205.3-1 Payment with application.

Each application shall be accompanied by payment of the first-year's advance rental of \$1 per acre or fraction thereof based on the total acreage included in the application, except that no advance rental payment is required with an application for a future interest. An application accompanied by a payment of the first-year's advance rental which is deficient by not more than 10 percent shall be accepted by the authorized officer provided all other requirements are met, but if the additional rental is not paid within 30

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days after receipt of notice the application shall be rejected or the lease, if issued, will be cancelled. If the annual rental established for the lease to be issued is more than \$1 per acre or fraction thereof, the applicant shall submit the additional rental due within 30 days after receipt of notice or the application shall be rejected.

(38 FR 35082, Dec. 21, 1973, as amended at 48 FR 6337, Feb. 14, 1983; 48 FR 17045, Apr. 20, 1983; 53 FR 17368, May 16, 1988)

### § 3205.3-2 Payment of annual rental.

(a) Annual rental in the amount specified in the lease which shall be not less than \$1 per acre or fraction thereof must be paid in advance and must be received by the designated Service office on or before the anniversary date of the lease. If there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law, except as provided by § 3244.2 of this title.

(b) If, on the anniversary date of the lease, less than a full year remains in the lease term, the rentals shall be payable in the same proportion as the period remaining in the lease term is to a full year. The rentals shall be prorated on a monthly basis for the full months, and on a daily basis for the fractional month remaining in the lease term. For the purpose of prorating rentals for a fractional month, each month will be deemed to consist of 30 days.

(c) If the term of a lease for which prorated rentals have been paid is further extended to or beyond the next anniversary date of the lease, rentals for the balance of the lease year shall be due and payable on the 1st day of the first month following the date through which the prorated rentals were paid. If the rentals are not paid for the balance of the lease year, the lease will be subject to cancellation. However, if the anniversary date occurs before the end of the notice period, the rental for the following lease year shall nevertheless be due on the anniversary date and failure to pay the full rental for that year on or before that date shall cause the lease

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to terminate automatically by operation of law except as provided by § 3244.2 of this title. The lessee shall not be relieved of liability for rental due for the balance of the previous lease year.

(d) If the payment is due on a day in which the designated Service office is closed, payment received on the next official working day shall be deemed to be made on time.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17368, May 16, 1988)

### § 3205.3-3 (Reserved)

### § 3205.3-4 Fractional interests.

Rentals and minimum royalties payable under leases for lands in which the United States owns only an undivided present or future fractional interest shall not be prorated, but shall be paid for the full acreage in the leased lands. However, royalty on production from such lands shall be payable in the same proportion to the royalty provided for in § 3205.3-5 of this title as the undivided fractional interest of the United States in the geothermal resources interest.

(47 FR 5004, Feb. 3, 1982)

### § 3205.3-5 Royalty on production.

Royalty shall be paid at the following rates on geothermal resources:

(a) A rate, as set forth in the lease, of not less than 10 per centum and not more than 15 per centum of the amount or value of steam, or any other form of heat or energy derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee;

(b) A rate as set forth in the lease, of not more than 5 per centum of any byproduct derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, except that as to any byproduct which is a mineral named in section 1 of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181), the rate of royalty for such mineral shall be the same as that provided in that Act and the maximum rate of royalty for such

mineral shall not exceed the maximum royalty applicable under that Act.

(c) In no event shall the royalty on any producing lease for any lease year, commencing with the lease year beginning on or after the commencement of production in commercial quantities, be less than \$2 per acre or fraction thereof, and this minimum royalty, in lieu of rental, shall be payable at the expiration of each lease year.

#### § 3205.3-6 Royalty on commercially demineralized water.

All geothermal leases issued pursuant to the provisions of this group shall provide for the payment to the lessor of a royalty on commercially demineralized water at a rate to be specified in the lease of not more than 5 per centum of the value of such commercially demineralized water that has been sold or utilized by the lessee or is reasonably susceptible of sale or utilization by the lessee, except that no payment of a royalty will be required on such water if it is used in plant operation for cooling or in the generation of electric energy or otherwise.

#### § 3205.3-7 Waiver, suspension or reduction of rental or royalty.

(a) The authorized officer may waive, suspend, or reduce the rental or royalty for any lease or portion thereof in the interests of conservation and to encourage the greatest ultimate recovery of geothermal resources if he determines that this is necessary to promote development or that the lease cannot be successfully operated under the lease terms. No waiver, suspension or reduction of rental or royalty will be granted where the only reason for the request for such relief is the unavailability of power generating facilities to utilize the geothermal steam.

(b) An application hereunder shall be filed with the authorized officer and shall:

(1) Contain the serial number of the leases and the names of the lessee and operator; (2) show the number, location, and status of each well that has been drilled, a tabulated statement for each month covering a period of not less than 6 months prior to the date of

filing the application of the aggregate amount of production subject to royalty computed in accordance with the operating regulations, the number of wells counted as producing each per well per day; (3) contain a detailed statement of expenses and costs of operating the lease, the income from the sale of any leased products and all facts tending to show whether the wells can be successfully operated using the royalty or rental fixed in the lease; and (4) where the application is for a reduction in royalty, furnish full information as to whether royalties or payments out of production are paid to others than to the United States, the amounts so paid, and the efforts made to reduce them. The applicant must also file agreements of the holders to a comparable reduction of all other royalties from the leasehold to an aggregate not in excess of one-half the Government royalties.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17368, May 16, 1988]

#### § 3205.3-8 Suspension of operations and production or suspension of operations.

(a) A suspension of all operations and production on a producing lease may, upon application by the operating rights owner, be consented to by the authorized officer, including cases where the operator is prevented from continuing production, despite the exercise of due care and diligence, by matters beyond the operator's reasonable control. Applications for suspensions of all operations and production shall be filed in the proper BLM office. Complete information showing the necessity for such relief shall be furnished.

(b) The authorized officer may, in the interest of conservation, direct the suspension of operations on any lease.

(c) The term of any lease shall be extended by adding thereto the period of the suspension, and no lease shall be deemed to expire during any suspension.

(d) A suspension shall take effect as of the time specified in the direction or assent of the authorized officer and shall last for the period specified in

the order or approval, except as provided in paragraphs (f) and (g) of this section.

(e) Rental or minimum royalty payments shall be suspended during any period of suspension directed or assented to by the authorized officer beginning with the first day of the lease month in which the suspension becomes effective or, if the suspension is effective on any date other than the first day of a lease month, beginning with the first day of the lease month following such effective date. Rental or minimum royalty payments shall resume on the first day of the lease month in which the suspension is terminated. Where rentals are creditable against royalties and have been paid in advance, proper credit shall be allowed on the next rental or royalty due under the terms of the lease.

(f) Where operations only or all operations and production have been suspended on a lease and the authorized officer approves resumption of operations only or all operations and production, such resumption shall be regarded as terminating the suspension, including the suspension of rental or minimum royalty payments, as provided in paragraph (e) of this section.

(g) Whenever it appears from information obtained by or furnished to the authorized officer that the interest of the lessor requires additional drilling or producing operations, he/she may, by written notice, order the beginning or resumption of such operations.

(h) The relief authorized under this section also may be obtained for any leases included within an approval unit or cooperative plan or development and operation. Unit or cooperative plan obligations shall not be suspended by relief obtained under this section but shall be suspended only in accordance with the terms and conditions of the specific unit or cooperative plan.

[53 FR 17368, May 16, 1988]

#### § 3205.3-9 Readjustments.

The rentals and royalties of any geothermal lease may be readjusted at not less than 20-year intervals beginning 35 years after the date geother-

mal steam is produced as determined by the authorized officer. In the event of any such readjustment neither the rental nor royalty paid during the preceding period shall be increased by more than 50 per centum, and in no event shall the royalty payable exceed 22½ per centum. Each geothermal lease shall provide for such readjustment. The authorized officer shall give notice of any proposed readjustment of rental or royalties. Unless the lessee relinquishes the lease within 30 days after receipt of such notice, he shall conclusively be deemed to have agreed to such terms and conditions. If the lessee files a protest, and no agreement can be reached between the authorized officer and the lessee within a period of 60 days, the lease may be terminated by either party, subject to the provisions of § 3000.4 of this title. If the lessee files a protest to the proposed readjusted terms and conditions, the existing terms and conditions shall remain in effect until there has been an agreement between the authorized officer and the lessee on the new terms and conditions to be applied to the lease or until the lease is terminated, except payments of any proposed readjusted rentals and royalties shall be paid in the timely manner prescribed in these regulations and may be paid under protest. The readjusted terms and conditions shall be effective as of the end of the term being adjusted.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17369, May 16, 1988]

#### § 3205.4 Rental and minimum royalty liability of lands committed to cooperative or unit plans.

##### § 3205.4-1 Prior to production.

All lands within any lease committed to an approved cooperative or unit plan shall at all times prior to production on any of the lands so committed remain subject to rental in accordance with § 3205.3 of this title.

[38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17369, May 16, 1988]

##### § 3205.4-2 After production.

As soon as production is obtained on or for any lands included in an ap-



proved cooperative or unit plan those lands which are included within the participating area of the producing well shall become liable for royalties in accordance with subpart 3205 of this title. All other unutilized lands shall remain subject to rental in accordance with § 3205.3 of this title.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17369, May 16, 1988)

#### Subpart 3206—Lease Bonds

##### § 3206.1 Bond obligations and filing.

##### § 3206.1-1 Bond obligations.

(a) A surety of personal bond conditioned upon compliance with the terms and conditions of the entire leasehold(s) covered by the bond shall be submitted by the lessee, operating rights owner (sublessee), or operator prior to commencement of drilling operations.

(b) Surety bonds shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570).

(c) Personal bonds shall be accompanied by:

- (1) Certificate of deposit issued by a financial institution, the deposits of which are Federally insured, explicitly granting the Secretary full authority to demand immediate payment in case of default in the performance of the terms and conditions of the lease. The certificate shall explicitly state on its face the Secretary's approval is required prior to redemption of the certificate of deposit by any party;
- (2) Cashier's check;
- (3) Certified check;
- (4) Negotiable Treasury securities of the United States of a value equal to the amount specified in the bond. Negotiable Treasury securities shall be accompanied by a proper conveyance to the Secretary of full authority to sell such securities in case of default in the performance of the terms and conditions of a lease; or
- (5) Irrevocable letter of credit issued by a financial institution, the deposits of which are Federally insured, for a specific term, identifying the Secretary as sole payee with full authority to demand immediate payment in case

of default in the performance of the terms and conditions of a lease. Letters of credit shall be subject to the following conditions:

(i) The letter of credit shall be issued only by a financial institution organized or authorized to do business in the United States;

(ii) The letter of credit shall be irrevocable during its terms. A letter of credit used as security for any lease upon which drilling has taken place and final approval of all abandonment has not been given, or as security for a statewide or nationwide lease bond, shall be forfeited and shall be collected by the authorized officer if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date;

(iii) The letter of credit shall be payable to the Bureau of Land Management upon demand, in part or in full, upon receipt from the authorized officer of a notice of attachment stating the basis therefor, e.g., default in compliance with the lease terms and conditions or failure to file a replacement in accordance with paragraph (c)(5)(ii) of this section;

(iv) The initial expiration date of the letter of credit shall be at least 1 year following the date it is filed in the proper BLM office; and

(v) The letter of credit shall contain a provision for automatic renewal for periods of not less than 1 year in the absence of notice to the proper BLM office at least 90 days prior to the originally stated or any extended expiration date.

(53 FR 22847, June 17, 1988; 53 FR 31858, Aug. 22, 1988)

##### § 3206.1-2 Filing.

A single originally executed copy of a bond on the appropriate form approved by the Director shall be filed in the proper BLM office. Nationwide bonds may be filed in any Bureau State office (see § 1821.2-1).

(53 FR 17369, May 16, 1988; 53 FR 31867, Aug. 22, 1988)

##### § 3206.2 Lease bond.

A lease bond may be posted by a lessee, operating rights owner (sublessee), or operator, in an amount of not

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less than \$10,000 for each lease conditioned upon compliance with all of the terms of the lease. Where 2 or more principals have interests in different portions of the lease, separate bonds may be posted. The operator on the ground shall be covered by a bond in his/her name as principal, or in the name of the lessee or sublessee, provided that lessee or sublessee, and surety consent is provided.

(53 FR 17369, May 16, 1988; 53 FR 31859, Aug. 22, 1988)

##### § 3206.3 Liability.

Where a bond is furnished by an operating rights owner (sublessee) or operator, the Secretary may bring suit thereon without joining the lessee if he/she is not a party to the bond.

(53 FR 17369, May 16, 1988)

##### § 3206.4 Statewide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than \$50,000 for full statewide coverage for all geothermal leases in the applicable State.

(53 FR 22847, June 17, 1988)

##### § 3206.5 Nationwide bond.

In lieu of bonds required under this subpart, the lessee, operating rights owner (sublessee), or operator may furnish a bond in an amount of not less than \$150,000 for full nationwide coverage for all geothermal leases.

(53 FR 22847, June 17, 1988)

##### § 3206.6 Unit operator's bond.

In lieu of individual lease, statewide, or nationwide bonds for operations conducted on leases committed to an approved unit agreement, the unit operator may furnish a unit operator bond in the manner set forth in § 3206.1-1 of this title. The amount of such a bond shall be determined by the authorized officer. The format for such a surety bond is set forth in § 3288.2 of this title. Where a unit operator is covered by a nationwide or statewide bond, coverage for such a unit may be provided by a rider to such bond specifically covering the

unit and increasing the bond in such amount as may be determined appropriate by the authorized officer.

(53 FR 22848, June 17, 1988)

##### § 3206.7 Default.

##### § 3206.7-1 Payment by surety.

Where upon a default the surety makes payment to the Government of any indebtedness due under a lease, the face amount of the surety bond and the surety's liability thereunder shall be reduced by the amount of such payment.

##### § 3206.7-2 Penalty.

Thereafter, upon penalty of cancellation of all of the leases covered by that bond, the principal shall post a new nationwide bond in the amount of \$150,000 or a new statewide bond in the amount of \$50,000 as the case may be, within 6 months after notice, or within such shorter period as the authorized officer may fix. However, in lieu thereof, the principal may within that time file separate bonds for each lease.

##### § 3206.8 Applicability of provisions to existing bonds.

The provisions of these regulations may be made applicable to any oil and gas nationwide or statewide bond by filing in the proper BLM office a written consent to that effect and an agreement to be bound by the provisions of this section executed by the principal and surety. Upon receipt thereof the bond will be deemed to be subject to the provisions of these regulations.

(38 FR 35082, Dec. 21, 1973, as amended at 48 FR 17045, Apr. 20, 1983)

##### § 3206.9 Termination of period of liability.

The period of liability of any lease shall not terminate until all lease terms and conditions have been fulfilled.

(53 FR 17369, May 16, 1988)

### Subpart 3207—Leases for a Fractional or Future Interest

SOURCE: 47 FR 5004, Feb. 3, 1982, unless otherwise noted.

#### § 3207.1 General.

Leases for lands in which the United States owns only a fractional or future interest in geothermal resources may be issued whenever the public interest will be best served thereby. Where the United States owns both a present and a future interest in the geothermal resources in a tract, these interests may be leased separately or together at the discretion of the authorized officer.

#### § 3207.2 Noncompetitive leases.

##### § 3207.2-1 Qualifications.

Qualifications for noncompetitive lease applicants for either a fractional present or future interest in geothermal resources will be the same as those appearing in subpart 3202 of this title with the exception that applicants for a lease of a noncompetitive future interest shall own, hold, or control at least 50 percent of the present operating rights in the geothermal resources.

##### § 3207.2-2 Applications.

Applications for a noncompetitive lease for either a fractional present or future interest in geothermal resources owned by the United States shall be filed and adjudicated in accordance with subpart 3210 of this title except for qualifications in § 3207.2-1 of this title. In addition, such applications shall include:

(a) A statement describing the extent of the applicant's present or future operating rights to the geothermal resources in a tract other than those resources owned by the United States in the lands covered by the application, together with:

(1) A certified abstract of title or certificate of title containing record evidence of the creation of such interest(s) in the geothermal resources (abstracts will be returned to the applicant when final action has been taken on the application), and

(2) A copy of the lease or contract if the applicant has acquired any of the

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operating rights to the described interest(s).

(b) The name of the Government agency administering the surface lands that must consent before a lease can be issued; or

(c) The name of the agency that may have records establishing ownership of the geothermal resources involved; and

(d) Identification of the project, if any, of which the lands are a part.

#### § 3207.2-3 Leasing.

(a) A lease of a fractional present interest shall contain the same terms and conditions, including the rentals, as are included in leases for lands in which the United States owns the full interest in the geothermal resources. The acreage of the lease shall be chargeable according to § 3201.2 of this title.

(b) A lease of a future Federal geothermal interest shall become effective on the date that the interest in the geothermal resources vests in the United States. The terms and conditions of the lease shall be the same as for a noncompetitive lease of a present interest issued under this part. The acreage in the lease shall become chargeable according to § 3201.2 of this title when the lease becomes effective.

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for the issuance of a noncompetitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights

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with the United States also shall cease and terminate to the same extent.

(d) The authorized officer shall not: (1) Issue leases requiring consent of a Government agency until the applicant executes stipulations required by the consenting agency.

(2) Issue a lease for the Federal interests in the geothermal resources on a parcel to a person who, with the Federal interest, would control less than 50 percent of all interest in the operating rights to the geothermal resources in a parcel, unless the Secretary determines it is in the public interest to do so.

[47 FR 5004, Feb. 3, 1982, as amended at 53 FR 17369, May 16, 1988]

#### § 3207.2-4 Agency action on applications. [Reserved]

#### § 3207.3 Competitive leasing.

##### § 3207.3-1 Nominations for leases.

No special form is required for requests or nominations of eligible parcels. Nominations or requests to have leases offered competitively for lands known to contain geothermal resources shall, to the extent possible, include the information required for noncompetitive leases under § 3207.2-2 of this title.

##### § 3207.3-2 Leasing.

(a) Fractional or future interests in geothermal resources owned by the United States in lands situated within a KGRA shall only be available for leasing under the provisions of this subpart and the provisions of subpart 3220 of this title.

(b) A lease of a future interest will become effective on the date that the interest in the geothermal resources vests in the United States. Its terms and conditions, including rental and royalty payments, shall be the same as for a lease of a present interest issued competitively under subpart 3220 of this title. The acreage in the lease shall become chargeable according to § 3201.2 of this title when the lease becomes effective.

(c) No rental or royalty shall be due to the United States prior to the vesting of the mineral rights in the United States. However, as consideration for

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the issuance of a competitive future interest geothermal lease, the lessee shall agree that if, prior to the vesting of the mineral rights in the United States:

(1) The future interest lessee transfers all or a part of the lessee's present interests, such lessee shall file in the proper BLM office an assignment or transfer, in accordance with subpart 3241 of this title, of the future interest lease of the same type and proportion as the transfer of the present interest; and

(2) The future interest lessee's present lease interests are relinquished, canceled, terminated, or expired, the future interest lease rights with the United States also shall cease and terminate to the same extent.

(d) If the controlling owner or holder of the present rights in an offered tract, is not the high bidder at the lease sale, such party shall be given an opportunity to meet the highest bona fide bid submitted for the tract. Failure to do so within the time allowed, or failure to submit any bid for the offered tract, shall be considered a waiver of all rights to the competitive lease and the lease shall be awarded to the highest qualified bidder. In the event there are two or more holders of a present interest in an offered tract who have equal rights and are willing to meet the highest bona fide bid on the offered tract, the right to meet the highest bona fide bid shall be determined by a drawing conducted by the authorized officer within 30 days after the bids are opened. These provisions are in addition to the provisions under § 3220.6 of this title.

(e) The authorized officer shall not issue leases requiring consent of a Government agency until the highest bona fide bidder executes stipulations required by the consenting agency.

[47 FR 5004, Feb. 3, 1982, as amended at 53 FR 17369, May 16, 1988]

**Subpart 3209—Geothermal Resources Exploration Operations**

**§ 3209.0-1 Purpose.**

(a) The regulations in this subpart establish procedures to be followed in conducting exploration operations on unleased public lands, the surface of which is administered by the Bureau, and on lands under a Federal lease for geothermal resources by the lessee. At the request of any other surface managing agency, the procedures in this part may be applied on a case by case basis to unleased public lands administered by such agency.

(b) The rights obtained under this subpart do not include an exclusive right to prospect for geothermal resources on the land described in a Notice of Intent or any preference right to a geothermal resources lease. (38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17369, May 16, 1988; 53 FR 21867, Aug. 22, 1988)

**§ 3209.0-2 Objectives.**

The regulations in this subpart encourage exploration of the public lands for geothermal resources in a manner that is consistent with the management policy set forth in § 1725.3 of this chapter. No exploration operations will be allowed if the authorized officer determines that such operations would be inconsistent with that policy. The authorized officer may suspend or terminate exploration operations upon due notice to the operator at any time if he determines that there is non-compliance with the terms and conditions of the Notice of Intent.

**§ 3209.0-5 Definitions.**

As used in this subpart:

(a) *Exploration operations* means any activity relating to the search for evidence of geothermal resources which requires physical presence upon public lands and which may result in damage to public lands or resources thereon. It includes, but is not limited to, geophysical operations, drilling of shallow temperature gradient wells, construction of roads and trails, and

cross-country transit by vehicle over public lands. It does not include the casual use of public lands for geothermal resources exploration. It does not include core drilling for subsurface geologic information, except drilling of shallow temperature gradient wells, or drilling for geothermal resources; these activities will be authorized only by the issuance of a geothermal resources lease. The regulations in this subpart, however, are not intended to prevent drilling operations necessary for placing explosive charges for seismic exploration, nor do they affect the exclusive right of a lessee to drill for geothermal resources upon the land subject to his lease.

(b) *Notice of Intent* means a Notice of Intent and Permit to Conduct Exploration Operations (Geothermal Resources).

(c) *Casual use* means activities that involve practices which do not ordinarily lead to any appreciable disturbance or damage to lands, resources, and improvements. For example, activities which do not involve use of heavy equipment or explosives and which do not involve vehicle movement except over established roads and trails are casual use.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17370, May 16, 1988)

**§ 3209.1 Notice of Intent and permit to conduct exploration operations (geothermal resources).**

**§ 3209.1-1 Application.**

(a) *Forms and where filed.* Any persons desiring to conduct exploration operations under the regulations of this subpart shall, prior to entry upon the lands, file for approval with the authorized officer for the district in which the public lands are located a Notice of Intent on a form approved by the Director.

(b) *Requirements.* The Notice of Intent will contain the following:

(1) The name and address, including zip code, both of the person, association, or corporation for whom the operations will be conducted and of the person who will be in charge of the actual exploration activities;

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(2) A statement that the signers agree that exploration operations will be conducted pursuant to the terms and conditions listed on the approved form;

(3) A brief description of the type of operations which will be undertaken;

(4) A description of the lands to be explored by township;

(5) A map or maps, available from state or Federal sources, showing the lands to be entered or disturbed by the proposed exploration operations; and

(6) The approximate dates of the commencement and termination of exploration operations.

**§ 3209.1-2 Review of Notice of Intent.**

The authorized officer will either approve or disapprove a Notice of Intent as promptly as practicable, but in any event within 30 calendar days after the date of the filing of the Notice of Intent. If the authorized officer shall disapprove a Notice of Intent, he shall explain in writing to the applicant the reasons for disapproval.

**§ 3209.2 Exploration operations.**

No exploration operations will be conducted on public lands except pursuant to the terms of a Notice of Intent which has been approved by the authorized officer.

**§ 3209.3 Completion of operations.**

Upon completion of the exploratory operations, there shall be filed with the authorized officer a Notice of Completion of Exploration Operations. Within 90 days after the filing of such Notice of Completion, the authorized officer shall notify the party who had conducted the operations whether all the terms and conditions set out by the regulations in this subpart and in the Notice of Intent have been met, or whether additional measures shall be taken to correct any unacceptable damage to the lands, specifying the nature and extent of such measures.

(38 FR 35082, Dec. 21, 1973, as amended at 48 FR 17045, Apr. 20, 1983)

**§ 3209.4 Bond requirement.**

**§ 3209.4-1 General.**

(a) Simultaneously with the filing of the Notice of Intent, and before the entry is made on the land, the party or parties filing the Notice of Intent must file with the authorized officer a surety company bond for each exploration operation in the amount of not less than \$5,000, conditioned upon the full and faithful compliance with all of the terms and conditions of the regulations in this subpart and of that Notice of Intent.

(b) A party shall be excused from compliance with the requirements of paragraph (a) of this section if he/she possesses either a nationwide bond in the amount of not less than \$50,000 covering all exploration operations, or a statewide bond in the amount of not less than \$25,000 covering all exploration operations in the state in which the lands on which he/she has filed the Notice of Intent are situated, or a lease bond of not less than \$10,000 furnished in accordance with § 3206.2 of this title.

(38 FR 35082, Dec. 21, 1973, as amended at 53 FR 17370, May 16, 1988)

**§ 3209.4-2 Riders to existing bond forms.**

Holders of nationwide and statewide oil and gas exploration bonds shall be permitted, in lieu of furnishing additional bonds, to amend their bonds to include geothermal resources exploration operations.

**§ 3209.4-3 Termination of period of liability.**

The authorized officer will not give his consent to the cancellation of the bond if an individual bond was submitted or to the termination of the period of liability if a State or nationwide bond was submitted, unless and until there has been compliance with all of the terms and conditions of the Notice of Intent. Should the authorized officer fail to notify the party within 90 days from the filing of Notice of Completion that all terms and conditions have been complied with or that additional corrective measures must be taken to rehabilitate the land, the period of liability under an individual



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bond or the period of liability for a particular exploration operation under a State or nationwide bond shall automatically terminate on the 91st day.

## PART 3210—NONCOMPETITIVE LEASES

### Subpart 3210—Noncompetitive Leases: General

#### Sec.

3210.1 Availability of land.

3210.2-1 Application.

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3210.3 Determination of priorities.

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**AUTHORITY:** The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

**SOURCE:** 38 FR 35093, Dec. 21, 1973, unless otherwise noted.

### Subpart 3210—Noncompetitive Leases: General

§ 3210.1 Availability of land.

(a) All lands subject to leasing that are not within a KGRA shall be available for lease application under the provisions of this subpart.

(b) For those particular lands included in canceled, relinquished, expired, or terminated leases, the BLM State Office having jurisdiction shall post a description of such lands on the first working day of a calendar month. Such lands shall then be available for lease applications beginning on the first working day of the calendar month following posting. Applications received prior to the first working day of the month following posting shall be considered filed on that date.

(48 FR 4337, Feb. 14, 1983)

§ 3210.2-1 Application.

An application for a lease shall be filed in an original and 2 copies in the proper BLM office on a form approved by the Director. The original form, or a copy thereof, filled in by typewriter or printed plainly in ink, manually signed in ink and dated by the offeror, or the offeror's duly authorized agent or attorney-in-fact, shall be required. Copies shall be an exact reproduction on 1 page of both sides of the ap-

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proved form without additions, omissions or other changes or advertising. The application shall be submitted in a sealed envelope marked *Application for lease pursuant to 43 CFR part 3210*. The application shall include a complete and accurate description of the lands applied for, which shall include all available lands, including reserved geothermal resources, within a surveyed or protracted section, or, if the lands are neither surveyed nor protracted and are described by metes and bounds, all the lands which will be included in a section when the lands are surveyed or protracted. The description of lands in an existing lease shall be conformed to a subsequent re-survey or amended protraction survey, whichever is appropriate.

(53 FR 17370, May 16, 1988)

### § 3210.2-2 Submission of applications.

Applications for leases under this subpart shall be submitted only during application filing periods. An application filing period shall begin on the first working day of each calendar month and shall end at the close of business on the last working day of that month. No applicant shall file during the same application filing period a second application which overlaps any of the land covered by his first application. When an application is filed with the authorized officer, the date of filing shall be stamped on the envelope. The envelope containing the application shall remain sealed until the end of the application filing period during which the application is filed. On the first working day following the end of the application filing period all applications shall be opened, and it will be determined which applications are for lands included in a KGRA. In determining whether land included in an application is a KGRA because of competitive interest, no application submitted during any subsequent application filing period will be considered. Applications for land determined to be KGRA will be rejected. All other applications will be assigned priority according to the date of filing. If any application covers both land within a KGRA and land outside a KGRA, the

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applicant will be granted the opportunity to amend his application to exclude the portion included in a KGRA, and his amended application will be assigned priority according to the date of filing of his original application, but must comply with all other requirements of these regulations.

(38 FR 35093, Dec. 21, 1973, as amended at 48 FR 17045, Apr. 20, 1983)

### § 3210.2-3 Withdrawal of application.

An application may not be withdrawn, either in whole or in part, unless the request is received by the proper BLM office before the lease or an amendment of the lease, whichever covers the land described in the withdrawal, has been signed on behalf of the United States even though the effective date of the lease is subsequent to the date of filing of the withdrawal, except where a separate conflicting lease has been signed on behalf of the United States covering the land described in the withdrawal.

### § 3210.2-4 Amendment to lease.

If any of the land applied for was open to filing when the application was filed but is omitted from the lease for any reason and thereafter becomes available for noncompetitive leasing, the original lease will be amended to include the omitted land unless, before the issuance of the amendment, the proper BLM office receives a withdrawal of the lessee's application with respect to such land or such omitted lands have been determined to be within a KGRA. The lease term for the land added by such an amendment shall be the same as if the land had been included in the original lease when it was issued.

### § 3210.3 Determination of priorities.

(a) No lease shall be issued before final action has been taken on (1) any prior application to lease the land, (2) any subsequent application to lease the land that is based upon a claimed preferential right, and (3) any petition for the renewal or reinstatement of an existing or former lease on the land. (b) Where a lease is issued before final action has been taken on such applications and petitions, it shall be canceled, and the advance rental re-

## § 3210.4

turned, after due notice to the lessee, where the applicant or petitioner is found to be qualified and entitled to receive a lease of the land.

(c) Applications for lease received in the mail or delivered on the same day will be deemed to have been simultaneously filed, and the right of priority and the order of processing will be determined by a public drawing.

(d) Prior to the issuance of any lease, a determination shall be made as to whether or not the lands are within a KGRA. Applications for lands determined to be within any KGRA will be rejected.

### § 3210.4 Rejections.

If, after the filing of an application for a noncompetitive lease and before the issuance of a lease, or amendment thereto, pursuant to that application, the land embraced in the application becomes included within a KGRA, the application will be rejected as to such KGRA lands. The authorized officer retains discretion to reject an application for a noncompetitive lease even though the tract for which application is made is not determined to be within a KGRA.

## PART 3220—COMPETITIVE LEASES

**NOTE:** The information collection requirements contained in part 3220 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0074. The information is being collected to allow the authorized officer to determine the qualified bidder of the highest bonus bid for a competitive lease parcel. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

(See 48 FR 24388, June 1, 1983)

### Subpart 3220—Competitive Leases: General

#### Sec.

3220.1 General.

3220.2 Notice of lease sale.

3220.2-1 Contents of notice.

3220.2-2 Detailed statement.

3220.3 Publication of the notice.

3220.4 Bidding requirements.

3220.5 Award of lease.

**AUTHORITY:** The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

## § 3220.1

### Subpart 3220—Competitive Leases; General

#### § 3220.1 General.

(a) Lands within a KGRA, except as provided under § 3201.1 of this chapter, will be available for leasing on the effective date of these regulations.

(b) The authorized officer will accept nominations to lease, or may on his own motion from time to time call for nominations to lease. Nominations may be withdrawn at any time.

(38 FR 35094, Dec. 21, 1973)

#### § 3220.2 Notice of lease sale.

##### § 3220.2-1 Contents of notice.

The notice of lease sale shall state the time, date and place of the sale, shall include a general description of the lands offered for sale and information on where the detailed statement of the precise description and terms and conditions of the lease(s), including rental and royalty rates, as well as the form on which a bid(s) shall be submitted and where that form may be obtained. Remittances for competitive bids shall be submitted as required in the detailed statement of sale notice.

(53 FR 17370, May 16, 1988)

##### § 3220.2-2 Detailed statement.

The detailed statement shall contain information on when and where to submit bids, bidding requirements, required payments, lease terms and conditions, the description of the leasing units being offered and any other information that may be helpful to the prospective bidder.

(53 FR 17370, May 16, 1988; 53 FR 31959, Aug. 22, 1988)

##### § 3220.3 Publication of the notice.

The notice of lease sale shall be published once a week for 3 consecutive weeks in a newspaper of general circulation in the area in which the lands are situated or in such other publications as the authorized officer may determine appropriate. The successful bidder shall, prior to lease issuance, pay his/her proportionate share of the total cost of publication of the notice.

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(53 FR 17370, May 16, 1988; 53 FR 31959, Aug. 22, 1988)

### § 3220.4 Bidding requirements.

(a) A separate identified sealed bid shall be submitted for each lease unit. Each bidder shall submit with the bid a certified or cashier's check, bank draft, money order, or cash in the amount of one-fifth of the amount bid. Execution and submission of a bid as prescribed in the detailed statement of lease sale constitutes certification of compliance with subpart 3202 of this title. Proof of qualifications to hold a lease shall be furnished upon the written request of the authorized officer in accordance with § 3202.2 of this title.

(b) All bidders are warned against violation of the provisions of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders.

(c) If the lease is terminated by relinquishment, or for failure to make timely payment of annual rentals or for any other reason, any unpaid installments of the bonus bid shall be immediately due and payable to the lessor.

(44 FR 12039, Mar. 5, 1979. Redesignated at 48 FR 24369, June 1, 1983, and amended at 53 FR 17370, May 16, 1988)

### § 3220.5 Award of lease.

(a) All sealed bids shall be opened at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.

(b) In the event that the Secretary determines to issue a lease, that lease shall be awarded to the highest responsible qualified bidder. High bids determined to be inadequate by the authorized officer shall be rejected.

(c) If the authorized officer cannot issue a decision to accept or reject the high bid within 30 days, the high bidder shall be notified and informed in writing of the reason for the delay and when a decision is expected.

(d) The right to reject any and all bids is reserved by the Secretary. If the high bid is rejected or is determined by the authorized officer to not be in compliance with the requirements set out in the detailed statement or the award notice, the bonus

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bid submitted with the bid shall be refunded; and

(e) If the lease is awarded, 3 copies of the lease shall be sent to the successful bidder who shall, within 15 days of receipt of notice, sign and return the lease forms together with payment of the balance of the bonus bid, the first year's rental and the bidder's proportionate share of the notice of lease sale publication costs. When the three copies of the lease are executed by the successful bidder and returned to the authorized officer, the lease will be executed by the authorized officer and a copy will be mailed to the lessee.

(f) If the successful bidder fails to execute the lease or otherwise comply with the applicable regulations, the deposit will be forfeited and disposed of as provided in section 20 of the Act. In this event, the lands may be reoffered when it is determined, in the opinion of the authorized officer, that sufficient interest exists to justify a competitive lease sale.

(44 FR 12039, Mar. 5, 1979, as amended at 48 FR 17045, Apr. 20, 1983. Redesignated at 48 FR 24369, June 1, 1983, and amended at 53 FR 17370, May 16, 1988)

## PART 3240—RULES GOVERNING LEASES

NOTE: The information collection requirements contained in part 3240 of Group 3200 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0074. The information being collected to allow the authorized officer to determine if parties obtaining an interest in a lease are qualified to hold such interest. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.

(See 48 FR 24368, June 1, 1983)

### Subpart 3240—Rules Governing Leases [Reserved]

#### Subpart 3241—Transfers

Sec.

- 3241.1 Transfers, interests, and qualifications.
- 3241.1-1 Transfers of record title.
- 3241.1-2 Transfers of operating rights.
- 3241.2 Requirements for filing of transfers.

Sec.

- 3241.2-1 Place of filing and filing fee.
- 3241.2-2 Time of filing transfers.
- 3241.2-3 Forms and number of copies required.
- 3241.2-4 Description of lands.
- 3241.3 Bonds.
- 3241.4 Approval.
- 3241.5 Continuing responsibility.
- 3241.6 Production payments.
- 3241.7 Overriding royalty interests.
- 3241.7-1 General.
- 3241.7-2 Limitation of overriding royalties.
- 3241.8 Lease account status.
- 3241.9 Effect of transfer.

#### Subpart 3242—Production and Use of Byproducts

- 3242.1 General.
- 3242.2 Production and use of commercially demineralized water as a byproduct; production and use of other sources of water.
- 3242.2-1 General.
- 3242.2-2 Prohibition on production of commercially demineralized water.
- 3242.2-3 Water wells on geothermal areas.
- 3242.2-4 State water laws.

#### Subpart 3243—Cooperative Conservation Provisions

- 3243.1 Cooperative or unit plans.
- 3243.2 Acreage chargeability.
- 3243.3 Communitization or drilling agreements.
- 3243.3-1 Approval.
- 3243.3-2 Requirements.
- 3243.4 Operating, drilling, development contracts or a combination for joint operations.
- 3243.4-1 Approval.
- 3243.4-2 Requirements.
- 3243.4-3 Acreage chargeability.

#### Subpart 3244—Terminations and Expirations

- 3244.1 Relinquishments.
- 3244.2 Automatic terminations and reinstatements.
- 3244.2-1 General.
- 3244.2-2 Exceptions.
- 3244.3 Cancellation of lease for noncompliance with regulations or lease terms; notice; hearing.
- 3244.4 Expiration by operation of law.
- 3244.5 Removal of materials and supplies upon termination of lease.

AUTHORITY: The Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

SOURCE: 38 FR 35097, Dec. 21, 1973, unless otherwise noted.

### Subpart 3240—Rules Governing Leases [Reserved]

#### Subpart 3241—Transfers

##### § 3241.1 Transfers, interests and qualifications.

###### § 3241.1-1 Transfers of record title.

The record title of leases may be assigned as to all or part of the leased acreage, except that no assignment shall be approved where (a) either the assigned or retained portions created by the assignment would be less than 640 acres, unless the total acreage in the lease being partially assigned includes an irregular subdivision, as provided in § 3203.2 of this title in which case the assigned and retained portions may be less than 640 acres by an amount which is smaller than the amount by which the area would be more than 640 acres if the irregular subdivision were added, or (b) an undivided interest is created by assignment of a lease containing less than 640 acres, or (c) where the lease being assigned contains 640 acres or more, and undivided interest of less than 10 percent would be created in the leased acreage. An exception to this minimum acreage provision of this section may be made by the authorized officer where he finds such exception is necessary in the interest of conservation of the resources.

(38 FR 35097, Dec. 21, 1973, as amended at 48 FR 17045, Apr. 20, 1983; 53 FR 17371, May 16, 1988)

###### § 3241.1-2 Transfer of operating rights.

A working interest or operating right in a lease also may be transferred under this subpart.

(53 FR 17371, May 16, 1988)

##### § 3241.2 Requirements for filing of transfers.

###### § 3241.2-1 Place of filing and filing fee.

A request for approval of a transfer of a lease or interest therein shall be filed in the proper BLM office and accompanied by a nonrefundable filing fee of \$50. A transfer not accompanied by the required nonrefundable filing

fee shall not be accepted and shall be returned.

(53 FR 17371, May 16, 1988)

###### § 3241.2-2 Time of filing of transfers.

(a) A request for approval of a transfer of a lease or of an interest therein, including a transfer of operating rights (sublease), shall be filed in the proper BLM office within 90 days from the date of execution. The 90-day filing period shall begin on the date the transferor signs and dates the transfer. If the transfer is filed after the 90th day, the authorized officer may require verification that the transfer is still in force and effect.

(b) A separate transfer shall be filed in the proper BLM office for each geothermal lease involving transfers of record title or of operating rights (sublease). When transfers to the same person, association, including partnerships, or corporation, involve more than 1 geothermal lease, 1 request for approval shall be sufficient.

(53 FR 17371, May 16, 1988)

##### § 3241.2-3 Forms and number of copies required.

A current form approved by the Director or an exact reproduction of the front and back thereof shall be used for each transfer of record title or of operating rights (sublease). A transfer filed on a form not currently in use shall be acceptable, unless such form has been declared obsolete by the Director prior to the filing of the transfer. Three copies of the form, including at least 1 originally executed copy, shall be filed in the proper BLM office.

(53 FR 17371, May 16, 1988)

##### § 3241.2-4 Description of lands.

Each transfer of record title shall describe the lands involved in the same manner as the lands are described in the lease, except no land description is required when 100 percent of the entire area encompassed in a lease is conveyed.

(53 FR 17371, May 16, 1988)

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#### § 3241.3 Bonds.

Where a transfer does not create separate leases, the transferee, if the transfer so provides, may become a co-principal on the bond with the transferor. Any transfer which does not convey the transferor's record title in all of the lands in a lease shall also be accompanied by a consent of his/her surety to remain bound under the bond as to the lease retained by said transferor, if the bond, by its terms, does not contain such consent. If a party to the transfer has previously furnished a statewide or nationwide bond, as appropriate, no additional showing by such party is necessary as to the bond requirement.

(53 FR 17371, May 16, 1988)

#### § 3241.4 Approval.

The request for transfer of record title or of operating rights (sublease) shall be approved upon the execution of the forms by the authorized officer. Upon approval, a transfer shall be effective as of the first day of the lease month following the date of filing of the transfer. Transfers are approved for administrative purposes only. Approval does not warrant or certify that either party to a transfer holds legal or equitable title to a lease.

(53 FR 17371, May 16, 1988)

#### § 3241.5 Continuing responsibility.

(a) The transferor and his/her surety shall continue to be responsible for the performance of any obligation under the lease until the transfer is approved by the authorized officer. If a transfer of record title is not approved, the obligation of the transferor and its surety to the United States shall continue as if no such transfer had been filed for approval.

(b) Upon approval, the transferee and his/her surety shall be responsible for the performance of all lease obligations notwithstanding any terms in the transfer to the contrary.

(c) When a transfer of operating rights (sublease) is approved, the sublessee is responsible for all obligations under the lease rights transferred to the sublessee.

(53 FR 17371, May 16, 1988)

#### § 3241.6 Production payments.

If payments out of production are reserved, a statement must be submitted stating the details as to the amount, method of payment, and other pertinent items.

#### § 3241.7 Overriding royalty interests.

##### § 3241.7-1 General.

(a) Overriding royalty interests in geothermal leases constitute accountable acreage holdings under these regulations.

(b) If an overriding royalty interest is created which is not shown in the instrument of transfer, a statement shall be filed in the proper BLM office describing the interest.

(c) All transfers of overriding royalty interests shall be filed for record in the proper BLM office within 90 days from the date of execution. Such interests shall not receive formal approval.

(38 FR 35097, Dec. 21, 1973, as amended at 48 FR 24369, June 1, 1983; 53 FR 17371, May 16, 1988)

##### § 3241.7-2 Limitation of overriding royalties.

(a) Except as herein provided, an overriding royalty on the value of the output of all geothermal resources, or any of them, at the point of shipment to market may be created by assignment or otherwise: *Provided*, That, (1) the overriding royalty is not for less than one-fourth (1/4) of 1 percent of the value of such output, and does not exceed 50 percent of the rate of royalty due to the United States as specified in the geothermal lease, or as reduced pursuant to such lease, and (2) the overriding royalty, when added to overriding royalties previously created, does not exceed the maximum rate established herein.

(b) The creation of an overriding royalty interest that does not conform to the requirements of paragraph (a) of this section shall be deemed a violation of the lease terms, unless the agreement creating overriding royalties provides (1) for a prorated reduction of all overriding royalties so that the aggregate rate of royalties does not exceed the maximum rate established herein.

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lished in paragraph (a) of this section and (2) for the suspension of an overriding royalty during any period when the royalties due to the United States have been suspended pursuant to the terms of the geothermal lease.

### § 3241.9 Lease account status.

Unless the lease account is in good standing as to the area covered by a transfer at the time the transfer is filed, or is placed in good standing before the transfer is acted upon, the request for approval of the transfer shall be denied.

(38 FR 17371, May 16, 1966)

### § 3241.9 Effect of transfer.

A transfer of record title of the complete interest in a portion of the lands in a lease shall segregate the transferred and retained portions of the lease into separate and distinct leases. A transfer of an undivided record title interest in the entire leasehold or a transfer of operating rights (sublease) shall not segregate the lease into separate or distinct leases.

(38 FR 17371, May 16, 1966)

## Subpart 3242—Production and Use of Byproducts

### § 3242.1 General.

Where the authorized officer determines that production, use, or conversion of geothermal steam under a geothermal lease is susceptible of producing a valuable byproduct or byproducts, including commercially demineralized water contained in or derived from such geothermal steam for beneficial use in accordance with applicable State water laws, the authorized officer shall require substantial beneficial production or use thereof, except where he/she determines that:

- Beneficial production or use is not in the interest of conservation of natural resources;
- Beneficial production or use would not be economically feasible; or
- Beneficial production and use should not be required for other reasons satisfactory to him/her.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17371, May 16, 1988)

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§ 3242.2 Production and use of commercially demineralized water as a byproduct, production, and use of other sources of water.

### § 3242.2-1 General.

Except as provided in these regulations, or the lease, the lessee shall have the right to process fluids, including brine, condensate, and other fluids, which are associated with geothermal steam within lands subject to the geothermal lease for the purpose of developing, producing, and utilizing the commercially demineralized water recovered as a result of such processing.

§ 3242.2-2 Prohibition on production of commercially demineralized water.

The lessee shall not be authorized to engage in the primary production of commercially demineralized water from the produced fluids contained in or derived from geothermal steam referred to in § 3242.2-1 of this title, where such use would result in the undue waste of geothermal energy.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

§ 3242.2-3 Water wells on geothermal areas.

All leases issued under these regulations shall be subject to the condition that, where the lessee finds only potable water in any well drilled for production of geothermal resources, the Secretary may, when the water is of such quality and quantity as to be valuable and useable for agricultural, domestic, or other purpose, acquire the well with casing installed in the well at the fair market value of the casing.

### § 3242.2-4 State water laws.

Nothing in these regulations shall constitute an express or implied claim or denial on the part of the Federal Government as to its exemption from State water laws.

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### Subpart 3243—Cooperative Conservation Provisions

#### § 3243.1 Cooperative or unit plans.

To conserve the natural resources of any geothermal pool, field or like area more properly, lessees and their representatives may unite with each other or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation or any geothermal resource area, or any part thereof (whether or not any part of that geothermal resource area is then subject to any cooperative or unit plan of development or operation). Applications to unitize shall be filed with the authorized officer who shall certify whether such plan is necessary or advisable in the public interest. The procedure in obtaining approval of a cooperative or unit plan of development, the provisions for the supervision of the cooperative or unit plan, and a suggested text of an agreement, are contained in part 3280 of this title.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

#### § 3243.2 Acreage chargeability.

All leases committed to any unit or cooperative plan approved or prescribed by the authorized officer shall be excepted in determining holdings or control for purposes of acreage chargeability. For the extension of leases committed to a unit plan, see subpart 3203 of this title.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

§ 3243.3 Communization or drilling agreements.

#### § 3243.3-1 Approval.

(a) When separate tracts under lease cannot be independently developed and operated in conformity with an established well-spacing or well-development program, the authorized officer may approve or require lessees to enter into communization or drilling agreements providing for the apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof,

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with other lands, whether or not owned by the United States, when found in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

(b) Preliminary requests to communize separate tracts shall be filed in triplicate with the authorized officer.

(c) Executed agreements shall be submitted to the authorized officer in sufficient number to permit retention of five copies after approval.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

#### § 3243.3-2 Requirements.

The agreement shall describe the separate tracts comprising the drilling or spacing unit, disclose the apportionment of the production or royalties to the several parties and the name of the operator, and shall contain adequate provisions for the protection of the interests of all parties, including the United States. The agreement shall be signed by or in behalf of all interested necessary parties and will be effective only after approval by the authorized officer.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

§ 3243.4 Operating, drilling, development contracts or a combination for joint operations.

#### § 3243.4-1 Approval.

(a) The authorized officer may, on such conditions as may be prescribed, approve operating, drilling or development contracts made by 1 or more geothermal lessees, with 1 or more persons, associations, including partnerships, or corporations whenever the authorized officer determines that such contracts are required for the conservation of natural resources or are in the best interest of the United States.

(b) Contracts submitted for approval under this section should be filed with the authorized officer together with enough copies to permit retention of five copies after approval.

(c) The authority of the authorized officer to approve operating, drilling,

or development contracts without regard to acreage limitations ordinarily shall be exercised only to permit operators to enter into contracts with a number of lessees sufficient to justify operations on a large scale for the discovery, development, production, or transmission of geothermal resources, or utilization of geothermal resources, and to finance the same.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

#### § 3243.4-2 Requirements.

(a) The contract shall be accompanied by a statement showing all the interests held by the contractor in the area or field and the proposed or agreed plan of operation or development of the field. All the contracts held by the same contractor in the area of field should be submitted for approval at the same time, and full disclosure of the project made. Complete details shall be furnished to the authorized officer may have facts upon which to make a definite determination in accordance herewith and to prescribe the conditions on which approval of the contracts shall be made.

(b) The application shall show a reasonable need for the contract and that it will not result in any concentration of control over the production or sale of geothermal resources which would be inconsistent with the antimonopoly provisions of law.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

#### § 3243.4-3 Acreage chargeability.

All leases operated under approved operating, drilling or development contracts shall be excepted in determining holdings or control for purposes of acreage chargeability.

### Subpart 3244—Terminations and Expirations

#### § 3244.1 Relinquishments.

(a) A lease, or any legal subdivision thereof, may be surrendered by the record title holder or the holder's duly authorized agent by filing a written relinquishment in the proper BLM office. A partial relinquishment shall

not reduce the remaining acreage in the lease to less than 840 acres, except where a departure is occasioned by an irregular subdivision. The minimum acreage provision may be waived by the authorized officer when it is determined that an exception is justified on the basis of exploratory and development data derived from activity on the leasehold. The relinquishment shall:

(1) Describe the lands to be relinquished as described in the lease;

(2) Include a statement as to whether the relinquished lands had been disturbed and if so whether they were restored as prescribed by the terms of the lease;

(3) State whether wells had been drilled on the lands and if so whether they had been placed in condition for abandonment; and

(4) Furnish a statement that all moneys due and payable to workmen employed on the leased premises have been paid.

(b) A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and his surety:

(1) To make payments of all accrued rentals and royalties;

(2) To place all wells on the land to be relinquished in condition for suspension of operations or abandonment;

(3) To restore the surface resources in accordance with all regulations and the terms of the lease; and

(4) To comply with all other environmental stipulations provided for by such regulations or lease. A statement must be furnished that all moneys due and payable to workmen employed on the leased premises have been paid.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

#### § 3244.2 Automatic terminations and relinquishments.

##### § 3244.2-1 General.

Except as provided in § 3244.2-2 of this title any lease will automatically terminate by operation of law if the lessee fails to pay the rental on or before the anniversary date of such lease. However, if the designated Service office is not open on the day a pay-

ment is due, payment received on the next day the designated Service office is open to the public shall be deemed timely made. The termination of the lease for failure to pay the rental must be noted on the official records of the proper BLM office.

(38 FR 35097, Dec. 21, 1973, as amended at 48 FR 6337, Feb. 14, 1983; 53 FR 17372, May 16, 1988)

#### § 3244.2-2 Exceptions.

(a) *Nominal deficiency.* If the rental payment due under a lease is received on or before its anniversary date but the amount of the payment is deficient and the deficiency is nominal, the lease shall not have automatically terminated unless the lessee fails to pay the deficiency within the period prescribed in a Notice of Deficiency, or by the due date, whichever is later. A deficiency is nominal if it is not more than \$10 or one percentum (1%) of the total payment due, whichever is more. The designated Service office shall send a Notice of Deficiency to the lessee. The Notice shall be sent by certified mail, return receipt requested, and shall allow the lessee 15 days from the date of receipt or until the due date, whichever is later, to submit the full balance due to the designated Service office. If the payment called for in the notice is not made within the time allowed, the lease will have terminated by operation of law as of its anniversary date.

(b) *Reinstatements.* (1) Except as hereinafter provided, the authorized officer may reinstate a lease which has terminated automatically for failure to pay the full amount of rental due on or before the anniversary date. If it is shown to his satisfaction that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee (reasonable diligence shall include a rental payment that is postmarked by the U.S. Postal Service, common carrier, or their equivalent (not including private postal meters) on or before the lease anniversary date or, if the designated Service office is closed on the anniversary date, postmarked on the next day the Service office is open to the public); and a petition for reinstatement, together with the required

rental, including any back rental which has accrued from the date of termination of the lease, is filed with the proper BLM office.

(2) The burden of showing that the failure to pay on or before the anniversary date was justifiable or not due to lack of reasonable diligence will be on the lessee. Reasonable diligence normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment. The authorized officer may require evidence, such as post office receipts, of the time of sending or delivery of payments.

(3) Under no conditions will a lease be reinstated if (i) a valid lease has been issued prior to the filing of a petition for reinstatement affecting any of the lands covered by the terminated lease, or (ii) the interest in the lands has been withdrawn, disposed of, or has otherwise become unavailable for leasing. However, the authorized officer will not issue a new lease for lands covered by a lease which terminated automatically until 90 days after the date of termination.

(4) Reinstatement of terminated leases is discretionary with the Secretary. The basic criterion in accordance with which this discretion will be exercised is whether the Secretary would be willing to issue a lease if a new lease offer for the same land were under consideration.

(38 FR 35097, Dec. 21, 1973, as amended at 53 FR 17372, May 16, 1988)

#### § 3244.3 Cancellation of lease for noncompliance with regulations or lease terms; notice; hearing.

A lease may be canceled by the authorized officer for any violation of these regulations, the regulations in 43 CFR part 3260, or the lease terms, 30 days after receipt by the lessee of notice from the authorized officer of the violation, unless (a) the violation has been corrected, or (b) the violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to

## § 3244.4

complete the correction. A lessee shall be entitled to a hearing on the matter of any such claimed violation or proposed cancellation of lease if a request for a hearing is made to the authorized officer within the 30-day period after notice. The procedures with respect to notice of such hearing and the conduct thereof, and with respect to appeals from decisions of Administrative Law Judges upon such hearings, shall follow insofar as practicable the procedural rules applicable to hearings and appeals in public lands cases within the jurisdiction of the Board of Land Appeals, Office of Hearings and Appeals, contained in Department Hearings and Appeals Procedures, part 4 of this title. The period for correction of violation or commencement to correct a violation of regulations or of lease terms, as foresaid, shall be extended to 30 days after the lessee's receipt of the Administrative Law Judge's decision upon such a hearing if the Administrative Law Judge shall find that a violation exists.

## § 3244.4 Expiration by operation of law.

(a) Any lease for land on which, of for which under an approved cooperative or unit plan of development or operation, there is no production in commercial quantities, or a producing well, or actual drilling operations being diligently prosecuted, will expire at the end of its primary term without notice to the lessee. Notation of such expiration need not be made on the official records, but the lands previously covered by that expired lease will be subject to the filing of new applications for leases only as provided in these regulations.

(b) Any lease that has continued beyond the end of its primary or extended term based on the existence of a well capable of producing geothermal resources in commercial quantities, shall expire 30 days after receipt of a decision from the authorized officer determining that diligent efforts are not being made toward utilization of geothermal resources, unless, during such 30-day period, the lessee provides the authorized officer satisfactory evidence that diligent efforts are in fact being made.

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138 FR 35097, Dec. 21, 1973, as amended at 64 FR 13887, Apr. 6, 1999 and 65 FR 26443, June 28, 1990

## § 3244.5 Removal of materials and supplies upon termination of lease.

Upon the expiration of the lease, or the earlier termination thereof pursuant to this subpart, the lessee shall have the privilege at any time within a period of ninety (90) days thereafter of removing from the premises any materials, tools, appliances, machinery, structures, and equipment other than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures, and equipment subject to removal, but not removed within the 90-day period, or any extension thereof that may be granted because of adverse climatic conditions during that period, shall, at the option of the authorized officer, become property of the lessor, but the lessee shall remove any or all such property where so directed by the lessor.

138 FR 35097, Dec. 21, 1973, as amended at 63 FR 17372, May 16, 1998

## PART 3250—UTILIZATION OF GEOTHERMAL RESOURCES

### Subpart 3250—Utilization of Geothermal Resources

#### Sec.

- 3250.0-1 Purpose.
- 3250.0-3 Authority.
- 3250.0-5 Definitions.
- 3250.0-6 Policy.
- 3250.1 Applications.
- 3250.1-1 Requirements for application.
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- 3250.2 Action on application.
- 3250.3 Environmental analysis.
- 3250.4 Actions not requiring a license.
- 3250.4-1 Research and demonstration projects.
- 3250.4-2 Individual well production utilization.
- 3250.5 Action required on designated lands.
- 3250.5-1 Withdrawn or reserved lands.
- 3250.5-2 Lands under the jurisdiction of the Forest Service.
- 3250.5-3 Lands subject to section 24 of the Federal Power Act.
- 3250.5-4 Lands not subject to license.
- 3250.6 Licenses.
- 3250.6-1 Area covered by license.
- 3250.6-2 License provisions.

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#### Sec.

- 3250.6-3 Annual rental.
- 3250.7 Bonds.
- 3250.8 Assignments and transfers.
- 3250.9 Relinquishment, expiration, or termination of license.

Authority: Secs. 3 and 24, Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1025).

Source: 44 FR 20391, Apr. 4, 1979, unless otherwise noted.

### Subpart 3250—Utilization of Geothermal Resources

#### § 3250.0-1 Purpose.

The purpose of this subpart is to establish procedures for the utilization of Federal lands under geothermal lease by persons who have purchased or otherwise acquired the production of geothermal steam and geothermal resources.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17045, Apr. 20, 1983]

#### § 3250.0-3 Authority.

These regulations are issued pursuant to the Geothermal Steam Act of 1970 (30 U.S.C. 1001-1025) which authorizes the Secretary of the Interior to prescribe rules and regulations for the development, utilization, and conservation of geothermal steam resources, protection of the public interest, prevention of waste, and protection of water quality and other environmental qualities. The right to use lands under geothermal lease for the purpose of utilizing geothermal resources may be exercised only in accordance with these regulations.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17045, Apr. 20, 1983; 53 FR 17372, May 16, 1988]

#### § 3250.0-5 Definitions.

As used in this subpart, the term:

(a) *Licensee* means the individual, partnership, corporation, association, municipality or governmental unit which is authorized to use public lands for the construction of facilities and utilization of geothermal resources pursuant to this subpart.

(b) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the au-

## § 3250.0-6

thority to perform the duties described in this subpart.

(c) *Proper BLM office* means the State office of the Bureau of Land Management which administers the land subject to the geothermal lease.

(d) *Utilization site* means that tract of Federal lands under geothermal lease authorized for utilization of geothermal energy including, but not limited to, substations, switch yards, waste disposal and storage facilities, utility service lines, transmission lines, loading docks, processing plants, greenhouses, gasohol plants, crop dryers and appurtenant structures.

(e) *Joint Utilization Agreement* means the arrangement between the holder of a geothermal resource lease and a third party for utilization of geothermal steam and associated geothermal resources produced from a leasehold, for operation of utilization facilities.

(f) *Federal Geothermal Lease* means a lease issued under the Geothermal Steam Act of 1970 pursuant to the leasing regulations contained in part 3200 of this title.

(g) *Producible well* means a well capable of producing geothermal steam or geothermal resources in commercial quantities as defined in 43 CFR 3260.0-5 (f) and (g).

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17045, Apr. 20, 1983]

#### § 3250.0-6 Policy.

It is the policy of this Department to encourage the development and utilization of geothermal resources leased under the Geothermal Steam Act of 1970 in an environmentally acceptable manner. Granting of a lease carries an implied right to reasonable access and land use for development. The provisions of these regulations shall be applied, however, in order to assure reasonable compatibility of any proposed utilization with other authorized uses and resource values of the land.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17045, Apr. 20, 1983]

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### § 3250.1 Applications.

#### § 3250.1-1 Requirements for application.

Any lessee or any party to a joint utilization agreement or a sales contract who desires a license to use the surface of lands under Federal geothermal lease for construction of utilization facilities, other than as provided in part 3260 and § 3250.4 of this title, shall file an application with the authorized officer.

(a) An application for a license shall be filed in duplicate in the proper BLM office.

(b) Each application must be accompanied by a non-refundable fee of \$50.

(c) No specific form is required.

(d) Each application shall include:

(1) A description of the land applied for by legal subdivision, section, township and range, or by approved projection surveys, if applicable. If the lands have not been surveyed, the lands shall be described by metes and bounds, giving courses and distances between the successive angle points on the boundary of the tract and connecting by courses and distances to an official corner of the public land surveys or a prominent readily identifiable geographic location. The approximate acreage involved shall be included as part of the description.

(2) A map or maps showing the boundaries of the site and the location and dimensions of buildings, cooling towers or ponds, waste disposal or storage sites, switch yards, roads, pipelines, utility service lines, transmission lines and all other structures or facilities used in connection with the utilization of the geothermal steam and associated geothermal resources. In addition, the authorized officer may require maps showing the general location of proposed facilities to be used in connection with utilization of the geothermal resources but outside the license area.

(3) A description of the proposed facility including pertinent information about any substation included in the facility, indicating whether the proposed facility is to be interconnected with other facilities and whether the energy produced is to be sold to others or used by the applicant.

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(4) A copy of any joint utilization agreement or sales contract entered into with a Federal geothermal lessee or lessees and the applicant for the utilization of geothermal steam and associated geothermal resources.

(5) A statement showing the amount of merchantable timber, if any, to be cut, removed or destroyed in the construction of the proposed plant or facility, and a statement of agreement to deposit with the Bureau of Land Management, in advance of construction, the dollar amount as determined by the authorized officer to be the full stumpage value of the timber to be cut, removed or destroyed.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

### § 3250.1-2 Who may hold licenses.

Licenses shall be issued only to citizens of the United States, associations of such citizens, corporations organized under the laws of the United States, any State or the District of Columbia or governmental units, including, without limitation, municipalities.

[53 FR 17372, May 16, 1988]

### § 3250.2 Action on application.

Where the authorized officer determines that an application is incomplete or not in conformity with the law or regulations, he shall notify the applicant of the deficiencies and provide an opportunity for correction of the deficiency.

### § 3250.3 Environmental analysis.

The authorized officer shall complete, in a timely manner, any environmental review determined to be necessary to conform with the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

[48 FR 17046, Apr. 20, 1983]

### § 3250.4 Actions not requiring a license.

#### § 3250.4-1 Research and demonstration projects.

A research and demonstration (R. & D.) project sited on a Federal geothermal lease consisting of a power generating facility of not more than 20

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MW's electrical capacity and with a maximum life of five years from the date the facility becomes operational will not require a license under the regulations of this subpart. An R. & D. permit for a facility of 20 MW's or less shall be obtained from the Area Geothermal Supervisor under the provisions of 43 CFR part 3260. In the event an R. & D. project is proposed to be retained for commercial operation after the initial five-year period, a license shall be obtained under this subpart. Application for such a license may be submitted prior to construction or at any time during the 5 year permitted life period of the R. & D. project if conversion of the facility to a power plant is contemplated during the permit period. R. & D. permits granted under 43 CFR part 3260 shall conform to the provisions of § 3200.0-6 of this title.

[44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988]

### § 3250.4-2 Individual well production utilization.

A license shall not be required for the purpose of installing a facility for testing or utilization of the production from an individual well for either electrical power generation or any non-electrical beneficial use. However, a license shall be required for any substantial or facility for transmission or lease of more than 10 MW maximum output. In order to install such a facility, a permit shall be obtained from the authorized officer under the provisions of part 3260 of this title. Permits granted under part 3260 of this title shall conform with the requirements of § 3200.0-6 of this title.

[44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988]

### § 3250.5 Action required on designated lands.

#### § 3250.5-1 Withdrawn or reserved lands.

(a) Where the land sought for utilization facilities for geothermal steam or associated geothermal resources is withdrawn or reserved for the use of a Federal Agency other than Interior, the authorized officer shall consult with such other agency before the license is issued. The license shall in-

## § 3250.5-4

clude any terms and conditions required by the surface managing agency.

(b) Where the land sought for utilization facilities for geothermal resources is withdrawn or reserved for the use of an Interior agency, the authorized officer shall consult with such agency before the license is issued. The license shall include any terms and conditions deemed appropriate by the authorized officer.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

### § 3250.5-2 Lands under the jurisdiction of the Forest Service.

Where the land sought for utilization facilities for geothermal resources is on any National Forest System lands, the authorized officer shall consult with and obtain the agreement of the Forest Service regarding the specific site selection before the license is issued. The license shall include terms and conditions required by the Forest Service for protection of National Forest resources and for multi-use management.

[44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983]

### § 3250.5-3 Lands subject to section 24 of the Federal Power Act.

Where the land sought for a power plant site utilizing geothermal steam or associated geothermal resources is subject to the provisions of section 24 of the Federal Power Act, as amended (16 U.S.C. 818), the license shall be issued subject to such terms and conditions as the Federal Energy Regulatory Commission, Department of Energy, may prescribe.

### § 3250.5-4 Lands not subject to license.

No license shall be issued for lands which are not subject to leasing for development of geothermal resources, including, but not limited to, lands:

(a) Administered as part of the national park system;

(b) Within a national recreation system;

(c) Within a fish hatchery administered by the Secretary, wildlife refuge, wildlife range, game range, wildlife management area, waterfowl produc-

nished prior to commencement of any activity relating to plant operation.

(44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983; 53 FR 17373, May 16, 1988)

§ 3250.6-3 Annual rental.

Rental at a rate to be determined by the authorized officer shall be paid annually, but said rental shall not be less than \$100 per acre or fraction thereof if the utilization facility is for electrical generation, or not less than \$10 per acre or fraction thereof if the utilization facility is for non-electrical purposes. The first year's rental shall be paid to the authorized officer before issuance of the license and thereafter the rental shall be payable annually on or before the anniversary date of the license. The license shall provide that, beginning with the tenth year, the rental for the lands embraced in the license shall be reassessed, excluding improvements due to development of the geothermal resources, at the discretion of the authorized officer upon notice to the licensee, but not more often than at 10 year intervals thereafter, except in extraordinary circumstances.

(44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983; 53 FR 17373, May 16, 1988)

§ 3250.7 Bonds.

Bonds shall be either corporate surety bonds or personal bonds.

(a) *Surety bond.* The licensee of an electrical generating facility shall furnish and maintain a surety bond of not less than \$100,000, conditioned upon compliance with all the terms and conditions of the license. The licensee for a nonelectrical utilization facility may be required to furnish a surety bond in an amount specified by the authorized officer. The authorized officer may determine not to require a surety bond in circumstances where it is determined that the nonelectrical uses have a low potential for causing damage to the environment.

(b) *Personal bond.* In lieu of a surety bond, the licensee may submit a personal bond accompanied by cash in an amount equal to the dollar amount of the bond or negotiable securities of

ment as to whether the land covered by the license has been disturbed and, if so, whether it has been restored as prescribed by the terms and conditions of the license. The relinquishment shall not be accepted until the requirements for reclamation of the land have been met.

(b) A license issued under this part may be terminated by written order of the authorized officer for any violation of any applicable regulation or any license term or condition, after 30 days notice. However, the termination shall not take effect if within the 30 day notice period either (1) the violation is corrected or (2) the licensee has commenced in good faith to correct the violation and shall thereafter proceed diligently to correct the violation where the violation is such that it cannot be corrected within the notice period. If a request for appeal is filed within the 30 day notice period, then the licensee shall be entitled to a hearing on the claimed violation and the termination in accordance with part 4 of this title. In the event such appeal is timely filed, the period for commencement to correct such violation shall be extended to 30 days after a final decision is rendered if it is found that a violation exists.

(c) Upon the relinquishment, expiration, or termination of the license, the licensee shall, if directed by the authorized officer, remove all structures, machinery, and other equipment from the land covered by the license. Any structures, machinery, or equipment allowed to remain on the land shall become the property of the United States on the expiration of the period allowed for removal of same. Removal of such property shall be at the licensee's expense.

(d) The licensee shall, for a period of not more than six months, maintain any equipment and facilities needed, as determined by the authorized officer, for the protection of any wells from which production was being utilized by the licensee.

(e) Where land covered by a license has been disturbed, the licensee shall within one year following the relinquishment, expiration, or termination of a license issued under this part restore the land in accordance with the

the United States having a market value at the time of the deposit of not less than the required dollar amount of the bond.

(c) *Obligations under bond.* The licensee shall comply with all the terms and conditions of the license under this subpart and shall be:

(1) Liable for all damages to the lands or property of the United States caused by the licensee or his employees or contractors or employees of such contractors, and

(2) Indemnify the United States against any liability for damages or injury to life, person or property arising from the occupancy or use of the lands under license. Where a utilization facility license is granted under this subpart to a State or other governmental agency which does not have the authority to assume such liability with respect to damages caused by it to lands or property, such agency shall be responsible for repair or all such damages.

(44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983)

§ 3250.8 Assignments and transfers.

(a) Any proposed transfers in whole or in part of any right, title or interest in the plant or facility licensed under this subpart shall be filed with the authorized officer. The application for transfer shall be accompanied by the same showing of qualifications of the transferee as is required of the applicant under this subpart, and shall be supported by a stipulation that the assignee shall comply with and be bound by all the terms and conditions of the license. No transfer shall be valid unless and until it is approved in writing by the authorized officer.

(b) An application for approval of an assignment or transfer made pursuant to this section shall be accompanied by a nonrefundable filing fee of \$50.

(44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988)

§ 3250.9 Relinquishment, expiration, or termination of license.

(a) A licensee may surrender a license by filing a written relinquishment in the proper BLM office. The relinquishment shall include a state-

ment as to whether the land covered by the license has been disturbed and, if so, whether it has been restored as prescribed by the terms and conditions of the license. The relinquishment shall not be accepted until the requirements for reclamation of the land have been met.

(b) A license issued under this part may be terminated by written order of the authorized officer for any violation of any applicable regulation or any license term or condition, after 30 days notice. However, the termination shall not take effect if within the 30 day notice period either (1) the violation is corrected or (2) the licensee has commenced in good faith to correct the violation and shall thereafter proceed diligently to correct the violation where the violation is such that it cannot be corrected within the notice period. If a request for appeal is filed within the 30 day notice period, then the licensee shall be entitled to a hearing on the claimed violation and the termination in accordance with part 4 of this title. In the event such appeal is timely filed, the period for commencement to correct such violation shall be extended to 30 days after a final decision is rendered if it is found that a violation exists.

(c) Upon the relinquishment, expiration, or termination of the license, the licensee shall, if directed by the authorized officer, remove all structures, machinery, and other equipment from the land covered by the license. Any structures, machinery, or equipment allowed to remain on the land shall become the property of the United States on the expiration of the period allowed for removal of same. Removal of such property shall be at the licensee's expense.

(d) The licensee shall, for a period of not more than six months, maintain any equipment and facilities needed, as determined by the authorized officer, for the protection of any wells from which production was being utilized by the licensee.

(e) Where land covered by a license has been disturbed, the licensee shall within one year following the relinquishment, expiration, or termination of a license issued under this part restore the land in accordance with the

the United States having a market value at the time of the deposit of not less than the required dollar amount of the bond.

(c) *Obligations under bond.* The licensee shall comply with all the terms and conditions of the license under this subpart and shall be:

(1) Liable for all damages to the lands or property of the United States caused by the licensee or his employees or contractors or employees of such contractors, and

(2) Indemnify the United States against any liability for damages or injury to life, person or property arising from the occupancy or use of the lands under license. Where a utilization facility license is granted under this subpart to a State or other governmental agency which does not have the authority to assume such liability with respect to damages caused by it to lands or property, such agency shall be responsible for repair or all such damages.

(44 FR 20391, Apr. 4, 1979, as amended at 48 FR 17046, Apr. 20, 1983)

§ 3250.8 Assignments and transfers.

(a) Any proposed transfers in whole or in part of any right, title or interest in the plant or facility licensed under this subpart shall be filed with the authorized officer. The application for transfer shall be accompanied by the same showing of qualifications of the transferee as is required of the applicant under this subpart, and shall be supported by a stipulation that the assignee shall comply with and be bound by all the terms and conditions of the license. No transfer shall be valid unless and until it is approved in writing by the authorized officer.

(b) An application for approval of an assignment or transfer made pursuant to this section shall be accompanied by a nonrefundable filing fee of \$50.

(44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988)

§ 3250.9 Relinquishment, expiration, or termination of license.

(a) A licensee may surrender a license by filing a written relinquishment in the proper BLM office. The relinquishment shall include a state-

ment as to whether the land covered by the license has been disturbed and, if so, whether it has been restored as prescribed by the terms and conditions of the license. The relinquishment shall not be accepted until the requirements for reclamation of the land have been met.

(b) A license issued under this part may be terminated by written order of the authorized officer for any violation of any applicable regulation or any license term or condition, after 30 days notice. However, the termination shall not take effect if within the 30 day notice period either (1) the violation is corrected or (2) the licensee has commenced in good faith to correct the violation and shall thereafter proceed diligently to correct the violation where the violation is such that it cannot be corrected within the notice period. If a request for appeal is filed within the 30 day notice period, then the licensee shall be entitled to a hearing on the claimed violation and the termination in accordance with part 4 of this title. In the event such appeal is timely filed, the period for commencement to correct such violation shall be extended to 30 days after a final decision is rendered if it is found that a violation exists.

(c) Upon the relinquishment, expiration, or termination of the license, the licensee shall, if directed by the authorized officer, remove all structures, machinery, and other equipment from the land covered by the license. Any structures, machinery, or equipment allowed to remain on the land shall become the property of the United States on the expiration of the period allowed for removal of same. Removal of such property shall be at the licensee's expense.

(d) The licensee shall, for a period of not more than six months, maintain any equipment and facilities needed, as determined by the authorized officer, for the protection of any wells from which production was being utilized by the licensee.

(e) Where land covered by a license has been disturbed, the licensee shall within one year following the relinquishment, expiration, or termination of a license issued under this part restore the land in accordance with the

the United States having a market value at the time of the deposit of not less than the required dollar amount of the bond.

(c) *Obligations under bond.* The licensee shall comply with all the terms and conditions of the license under this subpart and shall be:

(1) Liable for all damages to the lands or property of the United States caused by the licensee or his employees or contractors or employees of such contractors, and



terms and conditions of the license. Additional time may be granted by the authorized officer upon a showing of good cause by the licensee. The bond required by § 3260.7 of this title shall not be released until the reclamation has been completed to the satisfaction of the authorized officer.

(44 FR 20391, Apr. 4, 1979, as amended at 53 FR 17373, May 16, 1988)

## PART 3260—GEOTHERMAL RESOURCES OPERATIONS

**NOTE 1:** (a) The information collection requirement contained in § 3262.4 is needed to document planned operations on geothermal leases. This information will be used to evaluate technical feasibility and environmental impacts of geothermal operations on Federal lands. The obligation to respond is mandatory. Clearance under 44 U.S.C. 3507 is not required by 44 U.S.C. 3506(c)(5). (b) The information collection requirement contained in § 3264.3 has been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0132. The information is being collected to document exploration expenditures for which diligence credit is desired. This information will be used to determine if expenditures qualify as diligent exploration under 43 U.S.C. 3203.5. The obligation to respond is required to obtain a benefit.

(47 FR 24130, June 3, 1982. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17375, May 16, 1988)

**NOTE 2:** The information collection requirements contained in part 3260 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1004-0132. The information is being collected to evaluate the technical feasibility and environmental impacts of geothermal operations on Federal lands. Clearance number 1004-0132 also covers information required by § 3264.3 as is required to document exploration expenditures for which diligence credit is desired in accordance with § 3203.5. A response is required to obtain a benefit.

(53 FR 17375, May 16, 1988)

**NOTE 3:** There are many leases and agreements currently in effect, and which will remain in effect, involving Federal geothermal resources leases which specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, or Conservation Division. These leases and agreements may also specifically refer to various officers such as Supervisor,

Conservation Manager, Deputy Conservation Manager, Minerals Manager, and Deputy Minerals Manager. In addition, many leases and agreements must now be referred to title 30 CFR part 270 or specific sections thereof. Those references must now be read in the context of Secretarial Order 3087 and now mean either the Bureau of Land Management or the Minerals Management Service as appropriate.

(See 48 FR 44788, Sept. 30, 1983)

### Subpart 3260—Geothermal Resources Operations: General

- Sec. 3260.0-1 Purpose.
- 3260.0-2 Policy.
- 3260.0-3 Authority.
- 3260.0-5 Definitions.

### Subpart 3261—Jurisdiction and Responsibility

- 3261.1 Jurisdiction.
- 3261.2 Responsibility of authorized officer.
- 3261.3 Regulation of operations.
- 3261.4 Required samples, tests, and surveys.
- 3261.5 Drilling and abandonment of wells.
- 3261.6 Well spacing and well casing.
- 3261.7 Values and payment for losses.

### Subpart 3262—Requirements for Operating Rights Owners and Operators

- 3262.1 Lease terms, regulations, waste, damage, and safety.
- 3262.2 Conduct of operations.
- 3262.2-1 Local representative.
- 3262.3 Drilling and producing obligations.
- 3262.4 Plan of operation.
- 3262.4-1 Plan of utilization.
- 3262.4-2 Subsequent well operations, construction of new production facilities, and alteration of existing production facilities.
- 3262.5 Well designations.
- 3262.5-1 Well records.
- 3262.5-2 Samples, tests, and surveys.
- 3262.5-3 Directional survey.
- 3262.5-4 Well control.
- 3262.5-5 Well abandonment.
- 3262.6 Pollution.
- 3262.6-1 Noise abatement.
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- 3263.1 Measurement of geothermal resources.

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- 3264.1 General requirements.
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- 3265.1 Noncompliance with regulations or lease terms.

### Subpart 3266—Appeals

- 3266.1 Appeals.

**AUTHORITY:** 30 U.S.C. 1001-1025.

**SOURCE:** 38 FR 35088, Dec. 21, 1973, unless otherwise noted. Redesignated at 48 FR 44788, Sept. 30, 1983.

**EDITORIAL NOTE:** Nomenclature changes to this part appear at 47 FR 28370, June 30, 1982, 48 FR 44789-44792, Sept. 30, 1983.

### Subpart 3260—Geothermal Resources Operations: General

#### § 3260.0-1 Purpose.

The Geothermal Steam Act (30 U.S.C. 1001-1026) authorizes the Secretary of the Interior to prescribe rules and regulations applicable to operations conducted under leases granted pursuant to that Act, and for the development, conservation and utilization of geothermal steam and associated geothermal resources, the prevention of waste, the protection of the public interest and the protection of water quality and other environmental qualities.

(48 FR 44788, Sept. 30, 1983)

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### § 3260.0-2 Policy.

The regulations in this part shall be administered by the Director, Bureau of Land Management.

(48 FR 44788, Sept. 30, 1983)

### § 3260.0-3 Authority.

These regulations are issued under the authority of the Geothermal Steam Act, as amended (30 U.S.C. 1001-1026) and Order Number 3087, dated December 3, 1982, as amended on February 7, 1983 (48 FR 8983), under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the leasing of restricted Indian lands, to the Bureau of Land Management.

(48 FR 44788, Sept. 30, 1983)

### § 3260.0-5 Definitions.

As used in the regulations in this part, the term:

(a) Lessee means a person or entity holding record title in a lease issued by the United States.

(b) Operator means any person or entity, including but not limited to the lessee, operating rights owner (sublessee), or facility operator, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or a portion thereof.

(c) Operating rights owner means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or a portion thereof have not been severed from record title.

(d) Waste means (1) physical waste, as that term is generally understood; (2) waste of reservoir energy through inefficiency, improper use of or unnecessary dissipation of reservoir energy; (3) the location, spacing, drilling, equipping, operating, or producing of any geothermal well or wells in a manner which causes or tends to cause reduction in the quantity of geothermal energy ultimately recoverable from a reservoir under prudent and

workmanlike operations or which tends to cause unnecessary or excessive surface or subsurface loss or destruction of geothermal energy; and (4) the inefficient transmission of geothermal energy from the source (well-head) to point of utilization.

(e) *Directionally drilled well* means the deviation of a well bore from the vertical or from its normal course in an intended predetermined direction of course with respect to the points of the compass. Directionally drilled well shall not include a well deviated for the purpose of straightening a hole that has become crooked in the normal course of drilling or holes deviated at random without regard to compass direction in an attempt to sidetrack a portion of the hole on account of mechanical difficulty in drilling.

(f) *Geothermal resources operational order or GRO order* means a formal numbered order, issued by the authorized officer, with the prior approval of the Director, which implements the regulations in this part, and applies to operations in an area, region, or any significant portion thereof.

(g) *Producible well* means a well which is capable of producing geothermal resources in commercial quantities.

(h) *Commercial quantities* means quantities sufficient to provide a return after all variable costs of production have been met.

(i) *Exploration operations* means any activities, relating to the search for evidence of geothermal resources, which require physical presence upon the leased lands and which may result in damage to the leased lands or the resources contained within. It includes, but is not limited to, geophysical operations, drilling and coring of shallow temperature gradient wells, construction of roads and trails, and cross-country transit by vehicle. It does not include casual use activities associated with geothermal resources exploration. In addition, it does not include core drilling to obtain subsurface geologic information, except in conjunction with the drilling of shallow temperature gradient wells, nor does it include the drilling for, the testing of, or the production of geothermal resources. However, these lim-

itations do not preclude the drilling of holes necessary for the emplacement of explosive charges for certain geophysical operations nor do they affect the right to drill for, test, or produce the geothermal resources on lands subject to his lease.

(j) *Casual use* means activities that involve practices that do not ordinarily lead to any appreciable disturbance or damage to lands, resources, or improvements. For example, activities that do not involve use of heavy equipment or explosives and that do not involve vehicle movement except over established roads and trails are casual use.

(k) *Individual Production Well Facility* means a facility located on a Federal geothermal lease that utilizes geothermal resources from a single well for electrical power generation or for nonelectrical purposes and which has an output of not more than 10-megawatt net capacity or heat energy equivalent.

(l) *Research and Demonstration Facility*, means a facility located on a Federal geothermal lease which: (1) Utilizes geothermal resources from one or more wells, (2) has an output of not more than 20-megawatt net capacity or heat energy equivalent, and (3) will be utilized exclusively for the research and demonstration of applications for the utilization of geothermal resources during an initial project life of not more than 5 years from the date the facility becomes operational.

(m) *Plant Facility* means a facility located on a Federal geothermal lease, other than an Individual Well Production Facility or a Research and Development Facility, that utilizes geothermal resources for electric power generation or nonelectric purposes.

(n) *Utilization Facility Site* means that portion of an area of operations for which a plan of utilization, filed pursuant to § 270.34-1 of this part, has been approved for the siting of an Individual Production Well Facility, a Research and Demonstration Facility, or a Plant Facility, including appurtenant structures.

(o) *Facility operator* means the operator, licensee, or the individual, corporation, association, or municipality that operates any facility on a Federal

geothermal lease for the beneficial utilization of geothermal resources.

(p) *Joint Facility Operating Agreement* means an agreement between an operating rights owner or licensee and another party for the siting, construction, and operation of facilities for the utilization of the geothermal resources produced from a Federal geothermal lease or leases.

(44 FR 13633, Mar. 31, 1978, as amended at 44 FR 37588, June 27, 1979; 47 FR 28370, June 30, 1982. Redesignated and amended at 48 FR 44788, 44789, Sept. 30, 1983, further amended at 53 FR 17373, May 16, 1988)

### Subpart 3261—Jurisdiction and Responsibility

#### § 3261.1 Jurisdiction.

Drilling, production, construction, and operation of any facility for the utilization of geothermal resources and handling and measurement of production, and, in general, all operations conducted on a geothermal lease are subject to the regulations in this group. These operations are subject to the jurisdiction of the authorized officer for the area in which the leased lands are situated.

(48 FR 44789, Sept. 30, 1983)

#### § 3261.2 Responsibility of authorized officer.

The authorized officer is authorized and directed to carry out the provisions of this part. The authorized officer shall require compliance with the terms of geothermal leases, with the regulations in this group and with the applicable statutes. The authorized officer shall act on all applications, requests, and notices required in this part. In executing the functions under this part, the authorized officer shall ensure that all permitted operations conform to the best practice and are conducted in a manner that protects the deposits of the leased lands and results in the maximum ultimate recovery and the beneficial utilization of geothermal resources, with minimum waste. The authorized officer shall also ensure that all permitted operations are consistent with the principles of the use of the lands for other purposes and the protection of the en-

vironment. As conditions in one area may vary widely from conditions in another area, the regulations in this part are intended to be general in nature. Detailed procedures hereunder in any particular area will be covered by GRO Orders. The requirements to be set forth in GRO Orders relating to surface resources or uses will be coordinated with the appropriate land management agency if other than BLM. The authorized officer may issue oral orders to govern lease operations, but such orders shall be confirmed in writing by the authorized officer as promptly as possible. The authorized officer may issue other orders and instructions to govern the development, method for production and the utilization of a deposit, field or area. Prior to issuance of GRO Orders, other written orders and instructions, or the approval of any plan of operation, the authorized officer shall consult with and receive comments from appropriate Federal and State agencies, operating rights owners, operators, and other interested parties. Before permitting operations to be commenced on the leased lands, the authorized officer shall determine if the lease is in good standing; whether the applicant has filed an acceptable bond, and has, when required by the regulations in this part, an approved plan of operations and/or plan of utilization, notice of intent, Sundry Notice or other appropriate permit. Approval of a plan of operations or other permit does not warrant or certify that the applicant holds legal or equitable title to the subject lease(s) which would entitle the applicant to conduct operations.

(48 FR 44789, Sept. 30, 1983, as amended at 53 FR 17373, May 16, 1988)

#### § 3261.3 Regulation of operations.

(a)(1) All operations performed under this part shall be conducted so as to:

- (i) Prevent the unnecessary waste of or damage to geothermal or other resources;
- (ii) Protect the quality of surface and subsurface waters, air, and other natural resources, including wildlife, soil, vegetation, and natural history;

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(iii) Protect the quality of valuable cultural resources, including archeological, historical, scenic and recreational resources;

(iv) Accommodate, as much as possible, other land uses;

(v) Protect human and wildlife resources from harmful levels of noise;

(vi) Prevent injury to life; and

(vii) Prevent damage to property, particularly from subsidence.

(2) The authorized officer shall inspect and supervise all operations under this part to ensure that the requirements of paragraph (a)(1) of this section are fulfilled, and shall issue such GRO Orders as are necessary to discharge this responsibility.

(3) GRO Orders shall be enforceable under § 3265.1 of this title.

(b) The authorized officer, through coordination with appropriate Federal surface managing agencies and in cooperation with other concerned Federal, State, and local agencies, shall prepare an environmental assessment in connection with any and all plans submitted to the authorized officer pursuant to § 3262.4-1 of this title.

(1) The environmental assessment shall include a description of the proposed action, an evaluation of the potential impact of the proposed action on the affected area, a discussion of alternatives to the proposed action, and a description of the mitigating measures that will be applied to eliminate or reduce adverse impacts. The environmental assessment shall also include a statement of reasons as to whether or not an environmental impact statement (EIS) is required.

(2) The authorized officer shall determine whether or not an environmental impact statement is required, based upon the findings and conclusions of the environmental assessment. If an environmental impact statement is required, it shall be prepared in accordance with the provisions of 40 CFR Group 1500.

(3) The environmental assessment shall be considered by the authorized officer in determining the appropriate terms and conditions for approval of the submitted plan.

(4) A copy of an environmental assessment completed under this section shall be submitted to the Geothermal

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Environmental Advisory Panel. All documents comprising such an assessment shall be made available for review to interested parties with the exception of those data which are subject to the provisions of § 3264.5 of this title. Upon completion of an environmental assessment, the authorized officer shall take such measures as are appropriate to notify appropriate Federal, State, and local agencies, and the public, of the availability of the assessment for review.

(44 FR 37689, June 27, 1979. Redesignated and amended at 48 FR 44788, 44789, Sept. 30, 1983)

## **§ 3261.4 Required samples, tests, and surveys.**

When necessary or advisable, the authorized officer shall require that adequate samples be taken and tests or surveys be made using acceptable techniques, without cost to the lessor, to determine the identity and character of formations; the presence of geothermal resources, water, or reservoir energy; the quantity and quality of geothermal resources, water or reservoir energy; the amount and direction of deviation of any well from the vertical; formation, casing, and tubing pressures, temperatures, rate of heat and fluid flow, and whether operations are conducted in a manner looking to the protection of the interests of the lessor.

## **§ 3261.5 Drilling and abandonment of wells.**

The authorized officer shall require that drilling be conducted in accordance with the terms of the lease, GRO orders, and the regulations in this group; and shall require plugging and abandonment of any well or wells no longer necessary for operations in accordance with plans approved or prescribed by him. Upon the failure of a lessee to comply with any requirement under this section, the authorized officer is authorized to perform the work at the expense of the lessee and the surety.

(38 FR 36068, Dec. 21, 1973. Redesignated and amended at 48 FR 44788, 44789, Sept. 30, 1983)

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## **§ 3261.6 Well spacing and well casing.**

The authorized officer shall approve proposed well-spacing and well-casing programs or prescribe such modifications to the programs as he determines necessary for proper development, giving consideration to such factors as:

(a) Topographic characteristics of the area;

(b) Hydrologic, geologic and reservoir characteristics of the field;

(c) The number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use;

(d) Protection of correlative rights;

(e) Unreasonable interference with multiple use of lands; and

(f) Protection of the environment, including ground water quality.

## **§ 3261.7 Values and payment for losses.**

The authorized officer shall determine the value of production accruing to the lessor where there is loss through waste or failure to drill and produce protection wells on the lease, and the compensation due to the lessor as reimbursement for such loss. Payment for such losses will be paid when billed.

## **Subpart 3262—Requirements for Operating Rights Owners and Operators**

### **§ 3262.1 Lease terms, regulations, waste, damage, and safety.**

(a) The operating rights owner or operator, as appropriate, shall comply with the lease terms, lease stipulations, applicable laws and regulations and any amendments thereof, GRO orders, and other written or oral orders of the authorized officer. All oral orders (to be confirmed in writing as provided in § 3261.2 of this title are effective when issued unless otherwise specified.

(b) The operating rights owner or operator, as appropriate, shall take all reasonable precautions to prevent: (1) Waste; (2) damage to any natural resource including trees and other vegetation, fish and wildlife and their habitat; (3) injury or damage to per-

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sons, real or personal property; and (4) any environmental pollution or damage.

(c) Any significant effect on the environment created by the operations or failure to comply with environmental standards shall be reported to the authorized officer within 24 hours and confirmed in writing within 30 days.

(38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17373, May 16, 1988)

## **§ 3262.2 Conduct of operations.**

(a) Whenever a change in operator occurs, the authorized officer shall be notified promptly in writing, and the new operator shall furnish evidence of sufficient bond coverage in accordance with subpart 3206 of this title.

(b) In all cases where an individual production well facility, research and demonstration facility, or plant facility is to be operated by a party other than the operating rights owner or licensee, such other party shall submit to the authorized officer the joint facility operating agreement between the operating rights owner or licensee and the facility operator. Such joint facility operating agreement shall authorize, upon acceptance by the authorized officer, the facility operator to enter upon the proposed facility site and related sites and to conduct thereon, in accordance with § 3262.4-1 of this title, such preliminary geologic and soil studies as are appropriate for the planning and design of the facilities necessary for the utilization of geothermal resources in the manner proposed. An operating rights owner, operator, or licensee also may construct and operate such facilities as have been approved under a plan of operation or utilization and for which a permit has been issued pursuant to the regulations in this part and, if a plant facility, for which a license has been issued in accordance with the regulations in this group.

(53 FR 17373, May 16, 1988)

## **§ 3262.2-1 Local representative.**

When required by the authorized officer, the operator shall designate a local representative empowered to receive notices and comply with orders

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of the authorized officer issued pursuant to the regulations in this part. (38 FR 35098, Dec. 21, 1973. Redesignated at 48 FR 44789, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

## § 3262.3 Drilling and producing obligations.

(a) The operating rights owner shall diligently drill and produce such wells as are necessary to protect the lessor from loss by reason of production on other properties, or in lieu thereof, with the consent of the authorized officer, shall pay a sum determined by the authorized officer as adequate to compensate the lessor for failure to drill and produce any such well. (b) The operating rights owner shall promptly drill and produce such other wells as the authorized officer may require in order that the lease be developed and produced in accordance with good operating practices. (See § 3203.8 of this title.)

(38 FR 35098, Dec. 21, 1973. Redesignated at 48 FR 44789, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

## § 3262.4 Plan of operation.

Except as otherwise provided in these regulations, a operator, prior to commencing operations on the leased lands or on lands subject to an approved unit or cooperative agreement, shall obtain the approval of a plan of operation by the authorized officer. A plan of operation is not required for: Subsequent well operations, the construction of new production facilities, or the alteration of existing production facilities, unless specifically required by the authorized officer, exploration operations or casual use activities. However, unless a previously approved plan included a specific authorization for subsequent well operations, construction of new production facilities, alteration of existing production facilities, or exploration operations, the operator may not conduct such operations or activities without the authorized officer's prior approval. Before commencing a subsequent well operation, the construction of a new production facility or the alteration of an existing production facility, the operator shall, as a minimum, obtain the authorized officer's approval of a

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permit or of a sundry notice, whichever is appropriate. Before commencing exploration operations, the lessee shall obtain the authorized officer's approval of a notice of intent. When a plan of operation is required by the regulations in this part, it shall be filed in triplicate with the authorized officer and shall include:

- (a) The proposed location of each well, including a layout showing the position of the mud tanks, reserve pits, cooling towers, pipe racks, and other surface facilities;
- (b) Existing and planned access and lateral roads;
- (c) Location and source of authorized water supply and road building material;
- (d) Location of camp sites, airstrips, and other support facilities;
- (e) Other areas of potential surface disturbance;
- (f) The topographic features of the land and the drainage patterns;
- (g) Methods for disposing of waste material;

(h) A narrative statement describing the proposed measures to be taken in conducting the proposed operation for the protection of the environment, including, but not limited to, the prevention or control of (1) fires, (2) soil erosion, (3) pollution of the surface and ground water, (4) damage to fish and wildlife or other natural resources, (5) air and noise pollution, and (6) hazards to public health and safety;

(i) All pertinent information or data which the authorized officer may require for proper and timely consideration of the plan of operation for the exploration, development, or utilization of geothermal resources and the protection of the environment;

(j) Provisions for monitoring to ensure that operations under the plan are conducted in compliance with the applicable regulations and GRO orders; and

(k) Provisions for collecting data concerning the existing air and water quality, noise, seismic and subsidence activities, and ecological systems of the leased lands for a period of at least 1 year prior to production with some of the collection to be continued during production and abandonment.

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The authorized officer may reduce the data collection requirements of paragraph (k) of this section, including the duration of data collection, commensurate with the level of potential environmental impacts from proposed projects. The information required for paragraphs (a) through (f) of this section may be shown on a map or maps available from State or Federal sources, provided that the scale of such map(s) is acceptable to the authorized officer. All documents submitted to the authorized officer as part of or in support of a plan of operation shall be made available to interested parties for review, with the exception of those data which are subject to the provisions of § 3264.5 of this title. Upon receipt of any plan of operation, the authorized officer shall take such measures as are appropriate to notify the Geothermal Environmental Advisory Panel, agencies, and Federal, State, and local agencies, and interested members of the public, of the availability of the plan for review. (43 FR 13833, Mar. 31, 1978, as amended at 44 FR 37590, June 27, 1979; 47 FR 24130, June 3, 1982. Redesignated and amended at 48 FR 44788, 44790, Sept. 30, 1983, further amended at 53 FR 17374, May 16, 1988)

## § 3262.4-1 Plan of utilization.

At any time after the issuance of a Federal geothermal lease, the operating rights owner, operator, licensee, or facility operator may conduct preliminary soil tests or studies necessary for determining those site(s) on the lease which are most suitable for the construction of a proposed utilization facility. Those site investigations that involve trenching or the construction of additional roads will require the prior written approval of the authorized officer and the appropriate surface management agency. Unless already authorized under an approved plan of operation, the operating rights owner, licensee, or facility operator must submit in triplicate to the authorized officer a plan of utilization and obtain the approval of the authorized officer and the appropriate surface management agency prior to commencing any site preparation, road construction, or facility construction.

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A plan of utilization shall include, as appropriate:

- (a) A description and/or plans for all proposed structures and facilities (other than proprietary data which may be submitted under § 3284.2-1 of this title) to be constructed, erected, or located on the lease, including other support facilities or ancillary equipment. This portion of the plan should include:
  - (1) A contour map showing the facility location(s);
  - (2) A description of the purpose and operation of each facility;
  - (3) A schematic flow diagram;
  - (4) A plan for architectural landscaping;
  - (5) A startup date and a schedule for the construction activities;
  - (6) The planned safety provisions for emergency shutdown to protect public health and safety and for protection of the environment, including a schedule for the testing and maintenance of safety devices; and
  - (7) The planned manpower coverage to be provided during the operation of the facility.
- (b) A copy of all site evaluation studies, soil reports, core logs, or laboratory reports which have been prepared for the site(s).
- (c) A description of any additional tests, studies, or surveys which are planned to assess the geologic suitability of the site(s). A separate approval of any such tests, studies, or surveys may be granted by the authorized officer prior to the approval of the overall plan of utilization.
- (d) A map showing the existing and planned access and lateral roads and the source of any road building material to be utilized.
- (e) The source, quality, and proposed consumption rate of the water supply to be utilized.
- (f) The identification of all other areas of potential surface disturbance.
- (g) The methods for disposing of waste water, solid wastes, and noncondensable gases.
- (h) A narrative statement describing the proposed measures to be taken in protecting the environment including, but not limited to, the prevention or control of (1) fires, (2) soil erosion, (3) pollution of the surface or groundwater

er, (4) damage to fish and wildlife, cultural resources, or other natural resources, (5) air and noise pollution, and (6) hazards to public health and safety during normal operations. This portion of the plan should also detail the procedures to be followed in complying with all existing applicable Federal requirements and pertinent State and local standards.

(1) The provisions made for monitoring facility operations to assure continuing compliance with applicable noise, air, and water quality standards and regulations under this part, and for other potential environmental impacts identified by the authorized officer. The operating rights owner, licensee, or facility operator shall be responsible for the monitoring of readily identifiable localized environmental impacts associated with the specific activities that are under their respective control.

(j) Any additional information or data which the authorized officer may require in support of the plan of utilization.

(k) A narrative statement describing, as appropriate, the method for the timely abandonment of the utilization facilities when no longer needed and the site restoration procedures to be conducted pursuant to the applicable provisions of the lease, GRQ Orders, the regulations in this part, and the regulations in this group.

All documents submitted to the authorized officer as part of or in support of a plan of utilization shall be made available to interested parties for review, with the exception of those data which are subject to the provisions of § 3264.5 of this title. Upon receipt of any plan of utilization, the authorized officer shall take such measures as are appropriate to notify the Geothermal Environmental Advisory Panel, appropriate Federal, State, and local agencies, and interested members of the public, of the availability of said plan for review.

(144 FR 37590, June 27, 1979. Redesignated and amended at 48 FR 44788, 44790, Sept. 30, 1983, further amended at 53 FR 17374, May 16, 1988)

§ 3262.4-2 Subsequent well operations, construction of new production facilities, and alteration of existing production facilities.

After completion of all operations authorized under any previously approved notice, permit, or plan, the operator shall not begin a subsequent well operation, the construction of a new production facility, or the alteration of an existing production facility until the authorized officer has, as a minimum, approved the proposed operation as described by the operator in a sundry notice or other appropriate permit application. Subsequent well operations that may be approved without a new or supplemental plan of operation include those operations to re-drill, repair, deepen, plug back, shoot, or plug and abandon any well; make casing tests, alter the casing or liner, stimulate production, or change the method of recovering production; or convert any formation or well for brine or fluid injection and which can be conducted without additional surface disturbance. The construction of a new production facility or the alteration of an existing production facility, which may be approved without a new or supplemental plan of operation, includes those where (a) the facility involved is related to the production of geothermal resources and the site of the utilization thereof; (b) the site of the proposed construction or alteration activity is within a surface use area designated for that purpose in a plan of operation previously approved by the authorized officer and the appropriate land management agency; and (c) the construction or alteration can be performed without additional surface disturbance. When required by the authorized officer, pursuant to the regulations in this part, the operator shall obtain the joint approval of the authorized officer and the appropriate land management agency for a new or supplemental plan of operation before commencing subsequent well operations, the construction of a new production facility, or the alteration of an existing production facility. In an emergency, an operator may take action to prevent damage without receiving the prior approval of the au-

thorized officer, but, in such cases, the operator shall promptly report to the authorized officer the corrective actions taken.

(143 FR 13834, Mar. 31, 1978. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

§ 3262.5 Well designations.

The operator shall mark each derick upon commencement of drilling operations and each producing or suspended well in a conspicuous place with his name or the name of the operator, the serial number of the lease, the number and location of the well. Whenever possible, the well location shall be described by section or tract, township, range, and by quarter-quarter section or lot. The operator shall take all necessary means and precautions to preserve these markings.

(138 FR 35088, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

§ 3262.5-1 Well records.

(a) The operator shall keep for each well at his field headquarters or at other locations conveniently available to the authorized officer, accurate and complete records of all well operations including production, drilling, logging, directional well surveys, casing, perforation, safety devices, redrilling, deepening, repairing, cementing, alterations to casing, plugging, and abandonment. The records shall contain a description of any unusual malfunction, condition or problem; all the formations penetrated; the content and character of mineral deposits and water in each formation; thermal gradients, temperatures, pressures, analyses of geothermal waters, the kind, weight, size, grade, and setting depth of casing; and any other pertinent information.

(b) The operator shall, within 30 days after completion of any well, transmit to the authorized officer copies of the records of all operations in a form prescribed by the authorized officer.

(c) Upon request of the authorized officer, the operator shall furnish (1) legible, exact copies of service company reports on cementing, perforating, acidizing, analyses of cores, electrical

and temperature logs, chemical analyses of steam and waters, or other similar services; (2) other reports and records of operations in the manner and form prescribed by the authorized officer.

(138 FR 35088, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

§ 3262.5-2 Samples, tests, and surveys.

(a) The operator, when required by the authorized officer, will make adequate sampling, tests and/or surveys using acceptable techniques, to determine the presence, quantity, quality, and potential of geothermal resources, mineral deposits, or water; the amount and direction of deviation of any well from the vertical; and/or formation temperatures and pressures, casing, tubing, or other pressures and such other facts as the authorized officer may require. Such tests or surveys shall be made without cost to the lessor.

(b) The operator shall, without cost to the lessor, take such formation samples or cores to determine the identity and character of any formation as are required and prescribed by the authorized officer.

(138 FR 35088, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

§ 3262.5-3 Directional survey.

The authorized officer may require an angular deviation and directional survey to be made of the finished hole of each directionally drilled well. The survey shall be made at the risk and expense of the operator unless requested by an offset operating rights owner or operator, and then, at the risk and expense of the offset party. A copy of the survey shall be furnished the authorized officer.

(138 FR 35088, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

§ 3262.5-4 Well control.

The operator shall: (a) Take all necessary precautions to keep all wells under control at all times; (b) utilize trained and competent personnel; (c) utilize properly maintained equipment



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and materials; and (d) use operating practices which insure the safety of life and property. The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers, and other surface control equipment and materials, casing and cementing programs, etc., to be used shall be based on sound engineering principles and shall take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated and other pertinent geologic and engineering data and information about the area.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

## § 3262.5-6 Well abandonment.

The operator shall promptly plug and abandon any well on the leased land that is not used or useful. No well shall be abandoned until its lack of capacity for further profitable production of geothermal resources has been demonstrated to the satisfaction of the authorized officer. Before abandoning a producible well, the operator shall submit to the authorized officer a statement of reasons for abandonment and his detailed plans for carrying on the necessary work. The detailed plans shall provide for the preservation of fresh water aquifers and for the prevention of intrusion into such aquifers of saline or polluted waters. A producible well may be abandoned only after receipt of written approval by the authorized officer. No well shall be plugged and abandoned until the manner and method of plugging have been approved or prescribed by the authorized officer. Equipment shall be removed, and premises at the well site shall be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the authorized officer. Drilling equipment shall not be removed from any suspended drilling well without taking adequate measures to close the well and protect the subsurface resources.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

## § 3262.6 Pollution.

The operator shall comply with all Federal and State standards with respect to the control of all forms of air, land, water, and noise pollution, including, but not limited to, the control of erosion and the disposal of liquid, solid, and gaseous wastes. The authorized officer may, in his discretion, establish additional and more stringent standards, and, if he does so, the operator shall comply with those standards. Plans for disposal of well effluents must take into account effects on surface and subsurface waters, plants, fish and wildlife and their habitats, atmosphere, or any other effects which may cause or contribute to pollution, and such plans must be approved by the authorized officer before action is taken under them.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

## § 3262.6-1 Noise abatement.

The operator, licensee, or facility operator, as appropriate, shall minimize noise during exploration, development, production, and utilization operations. The welfare of the operating personnel and the public must not be affected adversely as a consequence of the noise created by expanding gases. The method and degree of noise abatement shall be as prescribed or approved by the authorized officer.

[44 FR 37590, June 27, 1979. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

## § 3262.6-2 Land subsidence and seismic activity.

In the event subsidence or seismic activity results from the production of geothermal resources, as determined by monitoring activities by the operator or a government body, the operator shall take such action as required by the lease or by the authorized officer.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

## § 3262.6-3 Pits and sumps.

The operator shall provide and use pits and sumps of adequate capacity and design to retain all materials and fluids necessary to drilling, production, or other operations unless otherwise specified by the authorized officer. In no event shall the contents of a pit or sump be allowed to: (a) Contaminate streams, artificial canals or waterways, ground waters, lakes or rivers; (b) adversely affect environment, persons, plants, fish and wildlife and their habitats; or (c) damage the aesthetic values of the property or adjacent properties. When no longer needed, pits and sumps are to be filled and covered and the premises restored to a near natural state, as prescribed by the authorized officer.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

## § 3262.7 Accidents.

The operator shall take all reasonable precautions to prevent accidents and shall notify the authorized officer within 24 hours of all accidents on the leased land, and shall submit a full report thereon within 15 days.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

## § 3262.7-1 Workmanlike operations.

The operator shall carry on all operations and maintain the property at all times in a workmanlike manner, having due regard for the conservation of the property and the environment and for the health and safety of employees. The operator shall remove from the property or store, in an orderly manner, all scrap or other materials not in use.

[38 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988]

## § 3262.8 Departure from orders.

The authorized officer may prescribe or approve either in writing or orally, with prompt written confirmation, variances from the requirements of GRO orders and other orders issued pursuant to these regulations, when such variances are necessary for the

proper control of a well, conservation of natural resources, protection of human health and safety, property, or the environment. The authorized officer shall inform appropriate Federal and State agencies, of any action taken under this section.

## § 3262.9 Pilot operations or facility testing.

With respect to the pilot operations or facility testing of those utilization facilities in accordance with the provisions of 30 U.S.C. 1012, the authorized officer may approve the suspension, waiver or reduction of the royalty obligation for a period not to exceed 120 days of net operation upon application therefor. No form of relief from the royalty requirements of a lease will be approved where the geothermal resources and/or the output of the facility would be used commercially or sold during said period. In addition, no application in this respect will be approved in the absence of a determination by the authorized officer that the payment of royalty during this period would affect adversely the development and recovery of the resources and that the action would be in the interest of conservation, would encourage the greatest ultimate recovery of geothermal resources and is necessary in order to promote development or to ensure that the lease can be operated successfully under the lease terms. Each application for relief hereunder shall be filed in triplicate with the authorized officer and, as a minimum shall:

- (a) Identify the facility, its location and the facility operator;
- (b) Provide the serial number(s) of the lease(s) from which the geothermal resources are produced and the name(s) of the current lessee(s) and/or operator(s);
- (c) Contain the number and location of each well which will be utilized during the pilot or testing operation of the facility and the estimated daily volumes of geothermal resources to be produced of each such well;
- (d) Furnish a detailed statement of the estimated costs associated with the pilot or testing operations; and

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(c) Supply other appropriate documentation to support the contentions of the lease would be in accordance with the provisions of 30 U.S.C. 1012, as set forth in the preceding paragraph.

(48 FR 44790, Sept. 30, 1983)

**Subpart 3263—Measurement of Production**

§ 3263.1 Measurement of geothermal resources.

The operator shall measure or gauge all production in accordance with methods approved by the authorized officer. The quantity and quality of all production shall be determined in accordance with the standard practices, procedures, and specifications generally used in industry. All measuring equipment shall be tested periodically and if found defective, the authorized officer will determine the quantity and quality of production from the best evidence available.

(38 FR 36068, Dec. 21, 1973. Redesignated at 48 FR 44789, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

§ 3263.2 Determination of content of by-products.

The operator shall periodically furnish the authorized officer the results of periodic tests showing the content of byproducts in the produced geothermal fluid and gases. Such tests shall be taken as specified by the authorized officer and by the method of testing approved by him.

(38 FR 36068, Dec. 21, 1973. Redesignated at 48 FR 44789, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988)

§ 3263.3 Commingling production.

The authorized officer may authorize an operator to commingle production from wells on a lease with production from other leases subject to such conditions as may be prescribed.

(53 FR 17374, May 16, 1988)

(such as drilling time log and sample description) to be used to determine the formations penetrated and the proposed program for determining geothermal gradients and the sampling and analysis of geothermal resources.

(c) Each application shall be accompanied by a plat showing the surface and expected bottomhole locations and the distances from the nearest section or tract lines as shown on the official plat of survey or protracted surveys. The scale shall not be less than 2,000 feet to 1 inch.

(d) Each application should be accompanied by supporting structural and hydrologic information based on available geologic and geophysical data.

§ 3264.2-1 Application for utilization permit.

(a) A permit to construct and operate an individual production well facility of not more than 10-megawatt net capacity or heat energy equivalent, including all related on-lease facilities, must be obtained from the authorized officer prior to commencing surface disturbing activities related to the construction and operation of each such facility. The application for a permit in this respect shall be filed in triplicate with the authorized officer and must state the location of the principal facility and all related sites by distance in meters and direction from the nearest section or tract lines, as shown on the official plat of survey or protracted surveys, and the elevation of the ground level at these sites. The application must be accompanied by a proposed plan of utilization, as required by § 3262.4-1 of this title. All individual well production facilities must be constructed and operated in accordance with the requirements of the regulations in this group and any other applicable regulations.

(b) A permit to construct and operate a research and demonstration facility (involving one or more wells) of not more than 20-megawatt net capacity or heat energy equivalent, including all related on-lease facilities, must be obtained from the authorized officer prior to commencing any surface disturbing activities related to the con-

struction or operations of each such facility. The application for a permit in this respect shall be filed in triplicate with the authorized officer and must state the location of the principal facility and all related sites by distance in meters and direction from the nearest section or tract lines, as shown on the official plat of survey or protracted surveys, and the elevation of the ground level at these sites. The application must be accompanied by a proposed plan of utilization, as required by § 3262.4-1 of this title. Any permit issued for a research and demonstration facility shall be for an initial term of not more than 5 years from the date that the facility becomes operational. All research and demonstration facilities must be constructed and operated in accordance with the requirements of the regulations in this part, 43 CFR Group 3200, and other applicable regulations. The continued beneficial use of a research and demonstration facility beyond the initial term provided by any such permit, or the conversion of the facility to a plant facility at that time or at any time during the initial permit period, will require that a license be obtained from the responsible officer of the surface managing agency pursuant to the regulations in this group.

(c) A permit to construct and operate any plant facility, other than as provided in paragraph (a) or (b) of this section, including all related on-lease facilities, must be obtained from the authorized officer prior to commencing any surface disturbing activities related to the construction or operation of each such facility. If the proposed plant facility is to have an output of greater than 20-megawatt net capacity, or heat energy equivalent, the facility operator must also obtain a license or such other permit as may be required pursuant to the regulations in this group. The application for a permit in this respect shall be filed in triplicate with the authorized officer and must state the location of the principal facility and all related sites by distance in meters and direction from the nearest section or tract lines, as shown on the official plat of survey or protracted surveys, and the elevation of the ground level

at these sites. The application must be accompanied by a proposed plan of utilization, as required by § 3262.4-1 of this title. All plant facilities must be constructed and operated in accordance with the requirements of the regulations in this group and any other applicable regulations.

(d) Each application filed with the authorized officer for a permit to construct and operate a facility, as set forth in paragraph (a), (b), or (c) of this section, shall identify specifically the type of facility contemplated, the method of operation, and shall include:

(1) Designs, plans, and specifications for all improvements to be constructed or located at the principal facility site and at each related facility site in sufficient detail to permit a technical review for the purpose of determining that operational and design safety factors are adequate and that there will be compliance with all applicable regulatory and statutory requirements;

(2) An operating plan for the facility setting forth the procedures and standards pursuant to which the facility will be operated;

(3) The manner of metering facility input and output to determine plant performance and, when appropriate, to assure the proper calculation of the royalty value due;

(4) A schedule for the installation and pre-startup testing of all facility equipment and, if known, for the commencement of operations for the commercial utilization of geothermal resources; and

(5) Any additional pertinent information or data which the authorized officer may require for the proper consideration of the application.

(e) Except as permitted by the access provisions of the lease, transmission facilities (lines and substations) and roads or pipelines located on off-lease Federal surface will require that appropriate permits be obtained. In the event that a Federal agency, other than the Bureau of Land Management, has jurisdiction over all or a portion of the affected off-lease Federal surface, the necessary right-of-way permits must be obtained from that agency.

(f) When the construction and/or operation of a facility requires licensing or permitting by local, State, or Federal agencies (other than the Federal surface management agency), three copies of each such permit and/or license shall be submitted prior to the commencement of these activities.

(g) Where complete detailed engineering plans for all components or a utilization facility are not available at the time of the initial submission of an application for a utilization permit, the authorized officer may grant staged approval of separate components or phases of construction by means of a Sundry Notice or other appropriate permit.

(h) Prior to the actual operation of the facility, all equipment and pre-startup test results must be approved by the authorized officer. In addition, any utilization facility approved pursuant to this part may not be placed in operation, except for approved test periods, until an acceptable plan of production has been filed with and approved by the authorized officer.

144 FR 37591, June 27, 1979. Redesignated and amended at 48 FR 44788, 44791, Sept. 30, 1983.

#### § 3264.2-2 Sundry notices and reports on wells.

(a) Any written notice of intention to do work or to change plans previously approved must be filed with the authorized officer in triplicate, unless otherwise directed, and must be approved by him before the work is begun. If, in case of emergency, any notice is given orally or by wire, and approval is obtained, the transaction shall be confirmed in writing. A subsequent report of the work performed must also be filed with the authorized officer.

(b) Casing test: Notice shall be given in advance to the authorized officer or his representative of the date and time when the operator expects to make a casing test. Later, by agreement, the exact time shall be fixed. In the event of casing failure during the test, the casing must be repaired or replaced or recemented as required by the authorized officer or his representative. The results of the test must be reported

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within 30 days after making a casing test. The report must describe the test completely and state the amount of mud and cement used, the lapse of time between running and cementing the casing and making the test, and the method of testing.

(c) Repairs or conditioning of well: Before the repairing or conditioning of a well, a notice setting forth in detail the plan of work must be filed with, and approved by, the authorized officer. A detailed report of the work accomplished and the methods employed, including all dates, and the results of such work must be filed within 30 days after completion of the repair work.

(d) Well stimulation: Before the operator commences stimulation of a well by any means, a notice, setting forth in detail the plan of work, must be filed with and approved by the authorized officer. The notice shall name the type of stimulant and the amount to be used. A report showing the amount of stimulant used and the production rate before and after stimulation must be filed within 30 days from completion of the work.

(e) Altering casing in a well: Notice of intention to run a liner or to alter the casing by pulling or perforating by any means must be filed with and approved by the authorized officer before the work is started. This notice shall set forth in detail the plan of work. A report must be filed within 30 days after completion of the work stating exactly what was done and the results obtained.

(f) Notice of intention to abandon well: Before abandonment work is begun on any well, whether a drilling well, geothermal resources well, water well, or so-called dry hole, notice of intention to abandon shall be filed with, and approved by, the authorized officer. The notice must be accompanied by a complete log, in duplicate, of the well to date, provided the complete log has not been filed previously, and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), plans for mudding, cementing, shooting, testing, and removing casing, and any other pertinent information.

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(g) Subsequent report of abandonment: After a well is abandoned or plugged, a subsequent record of work done must be filed with the authorized officer. This report shall be filed separately within 30 days after the work is done. The report shall give a detailed account of the manner in which the abandonment or plugging work was carried out, including the nature and quantities of materials used in plugging and the location and extent (by depths) of the plugs of different materials; records of any tests or measurements made, and of the amount, size, and location (by depths) of casing left in the well; and a detailed statement of the volume of mud fluid used, and the pressure attained in mudding. If an attempt was made to part any casing, a complete report of the methods used and results obtained must be included.

138 FR 35088, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17374, May 16, 1988.

#### § 3264.2-3 Log and history of well.

The operator shall furnish in duplicate to the authorized officer, not later than 30 days after the completion of each well, a complete and accurate log and history. In chronological order, of all operations conducted on the well. A log shall be compiled for geologic information from cores or formations samples and duplicate copies of such log shall be filed. Duplicate copies of all electric logs, temperature surveys, water and steam analyses, hydrologic or heat flow tests, or direction surveys, if run, shall be furnished.

138 FR 35088, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17375, May 16, 1988.

#### § 3264.2-4 Monthly report of operations.

A report of operations for each lease must be made for each calendar month, beginning with the month in which drilling operations are initiated. The report must be filed in duplicate with the authorized officer on or before the last day of the month following the month for which the report is filed unless an extension of time for the filing of the report is granted by the authorized officer. The report



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shall disclose accurately all operations conducted on each well during the month, the status of operations on the last day of the month, and a general summary of the status of operations on the leased lands. The report must be submitted each month until the lease is terminated or until omission of the report is authorized by the authorized officer. The report shall show for each calendar month:

- (a) The lease serial number or the unit or communitization agreement number which shall be inserted in the upper right corner;
- (b) Each well listed separately by number, and its location by 40-acre subdivision (quarter-quarter section or lot), section number, township, range, and meridian;
- (c) The number of days each well was produced, whether steam or hot water or both were produced, and the number of days each input well was in operation, if any;
- (d) The quantity of production and any byproducts obtained from each well, if any are recovered;
- (e) The depth of each active or suspended well, and the name, character, and depth of each formation drilled during the month, the date and reason for every shutdown, the names and depths of important formation changes, the amount and size of any casing run since the last report, the dates and results of any tests or environmental monitoring conducted, and any other noteworthy information on operations not specifically provided for in the form.

(f) The footnote must be completely filled out as required by the authorized officer. If no sales were made during the calendar month, the report must so state.

#### § 3264.2-6 Monthly report of facility operations.

A report of operations for each individual production well facility, research and demonstration facility, or plant facility must be made by the facility operator for each calendar month beginning with the month in which operations are first commenced. The report must be filed in duplicate with the authorized officer on or before the last day of the month fol-

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lowing the month for which the report is filed, unless an extension of time for filing is granted specifically in writing by the authorized officer.

(a) For each utilization facility, the report shall show, as applicable, for each calendar month:

- (1) The lease serial number(s) or the unit or communitization agreement number covering the lands from which geothermal resources were produced and utilized at the facility;

(2) The output of the facility expressed as the number of kilowatt hours (gross and net output) of electricity generated or, when appropriate, as the heat energy equivalent thereof and the value of such output;

(3) The quantities (mass) of geothermal resources entering the plant and the average intake temperature and pressure;

(4) The quantity of water utilized from sources other than the produced geothermal resources;

(5) The total quantity (mass), temperature, and pressure of the plant effluent (waste water); and

(6) A detailed statement as to the reason or reasons for any suspension of facility operations during the month.

(44 FR 37592, June 27, 1979. Redesignated at 48 FR 44788, Sept. 30, 1983)

#### § 3264.3 Report of expenditures for diligent exploration operations.

For exploration expenditures to be considered for qualification as diligent exploration under 43 CFR 3203.5, the operator shall submit to the authorized officer a report of the expenditures no later than 60 days after the end of a lease year if the expenditures are to be credited for that lease year or future lease years.

(47 FR 24130, June 3, 1982. Redesignated at 48 FR 44788, Sept. 30, 1983, and amended at 53 FR 17375, May 16, 1988)

#### § 3264.4 Public inspection of records.

Geologic and geophysical interpretations, maps, and data required to be submitted under this part shall not be available for public inspection without the consent of the operating rights owner or operator, as appropriate, so long as the lease remains in effect.

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138 FR 35068, Dec. 21, 1973. Redesignated at 48 FR 44788, Sept. 30, 1983, further redesignated and amended at 53 FR 17375, May 16, 1988)

#### Subpart 3265—Procedure in Case of Violation of the Regulations or Lease Terms

§ 3265.1 Noncompliance with regulations or lease terms.

(a) Whenever an operating rights owner, operator, or anyone acting under his/her authority fails to comply with the provisions of the regulations or lease terms, the authorized officer shall give notice to remedy any defaults or violations. Failure by the party to perform or commence the necessary remedial action pursuant to the notice may result in a shut down of operations and may also result in cancellation of the lease pursuant to § 3244.3 of this title.

(b) The authorized officer is authorized to shut down any operations which he determines are unsafe or are causing or can cause pollution.

138 FR 35068, Dec. 21, 1973. Redesignated and amended at 48 FR 44788, Sept. 30, 1983, further amended at 53 FR 17375, May 16, 1988)

#### Subpart 3266—Appeals

§ 3266.1 Appeals.

(a) A party adversely affected by a decision of the authorized officer may appeal that decision to the Interior Board of Land Appeals as set forth in part 4 of this title.

(b) All decisions or approvals of the authorized officer under this part shall remain effective pending appeal unless the Interior Board of Land Appeals determines otherwise upon consideration of the standards stated in this paragraph. The provisions of 43 CFR 4.21(a) shall not apply to any decision or approval of the authorized officer under this subpart. A petition for a stay of a decision or approval of the authorized officer shall be filed with the Interior Board of Land Appeals, Office of Hearings and Appeals, Department of the Interior, and shall show sufficient justification based on the following standards:

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(1) The relative harm to the parties if the stay is granted or denied;

(2) The likelihood of the appellant's success on the merits;

(3) The likelihood of irreparable harm to the appellant or resources if the stay is not granted; and

(4) Whether the public interest favors granting the stay.

157 FR 29651, July 6, 1992)

#### PART 3280—GEOTHERMAL RESOURCES UNIT AGREEMENTS: UNPROVEN AREAS

NOTE: Many existing unit agreements specifically refer to the United States Geological Survey, USGS, Minerals Management Service, MMS, Supervisor, Conservation Manager, Deputy Conservation Manager, Minerals Manager and Deputy Minerals Manager in the body of the agreements, as well as reference to title 30 CFR part 270 or specific sections thereof. Those references must now be read in the context of the provisions of Secretarial Order 3087 and now mean the Bureau of Land Management or the Minerals Management Service as appropriate.

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3280.3 Model designation of successor operator.

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**Authority:** Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1026).

**Source:** 38 FR 35073, Dec. 21, 1973, unless otherwise noted. Redesignated at 48 FR 44792, Sept. 30, 1983.

**Editorial Note:** Nomenclature changes to this part appear at 47 FR 28370, June 30, 1982; 48 FR 44792, Sept. 30, 1983.

**Subpart 3280—Geothermal Resources Unit Agreements: General**

§ 3280.0-1 Purpose.

The regulations in this part prescribe the procedure to be followed and the requirements to be met by holders of Federal geothermal leases and their representatives who wish to unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan for the development of any geothermal resources pool, field or like area, or any part thereof.

(48 FR 44792, Sept. 30, 1983)

§ 3280.0-2 Policy.

Cooperative or unit agreements for the development of any geothermal resources pool, field or like area, or any part thereof, may be initiated by lessees, or where such agreements are deemed necessary in the interest of conserving natural resources, they may be required by the Director.

(48 FR 44792, Sept. 30, 1983)

§ 3280.0-3 Authority.

These regulations are issued under the authority of the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001-1026) and Order Number 3087, dated December 3, 1982, as amended February 7, 1983 (48 FR 8983), under which the Secretary consolidated and transferred the onshore minerals management functions of the Department, except mineral revenue functions and the leasing of restricted Indian lands, to the Bureau of Land Management.

(48 FR 44792, Sept. 30, 1983)

§ 3280.0-5 Definitions.

The following terms, as used in this part or in any agreement approved under the regulations in this part, shall have the meanings here indicated unless otherwise defined in such agreement:

(a) *Unit agreement.* An agreement or plan of development and operation for the production and utilization of separately owned interests in the geothermal resources made subject thereto as a single consolidated unit without regard to separate ownerships and which provides for the allocation of costs and benefits on a basis defined in the agreement or plan.

(b) *Cooperative agreement.* An agreement or plan of development and operations for the production and utilization of geothermal resources made subject thereto in which separate ownership units are independently operated without allocation of production.

(c) *Agreement.* For convenience, the term "agreement" as used in the regulations in this part refers to either a unit or a cooperative agreement as defined in paragraphs (a) and (b) of this section unless otherwise indicated.

(d) *Unit area.* The area described in a unit agreement as constituting the land logically subject to development under such agreement.

(e) *Unitized land.* The part of a unit area committed to a unit agreement.

(f) *Unitized substances.* Deposits of geothermal resources recovered from unitized land by operation under and pursuant to a unit agreement.

(g) *Unit operator.* The person, association, partnership, corporation, or

other business entity designated under a unit agreement to conduct operations on unitized land as specified in such agreement.

(h) *Participating area.* That part of the Unit Area which is deemed to be productive from a horizon or deposit and to which production would be allocated in the manner described in the unit agreement assuming that all lands are committed to the unit agreement.

(i) *Working interest.* The interest held in geothermal resources or in lands containing the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in a unit or cooperative agreement, the owner of such interest is vested with the right to explore for, develop, produce, and utilize such resources. The right delegated to the unit operator as such by the unit agreement is not to be regarded as a working interest.

(38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, Sept. 30, 1983)

**Subpart 3281—Application for Unit Agreement**

§ 3281.1 Preliminary consideration of agreements.

The form of unit agreement set forth in § 3286.1 of this title is acceptable for use in unproved areas. The use of this form is not mandatory but any proposed departure therefrom should be submitted with the application submitted under § 3281.2 of this title for preliminary consideration and for such revision as may be deemed necessary. In areas proposed for unitization in which a discovery of geothermal resources has been made, or where a cooperative agreement is contemplated, the proposed agreement should be submitted with the application submitted under § 3281.2 of this title for preliminary consideration and for such revision as may be deemed necessary. The proposed form of agreement should be submitted in triplicate and should be plainly marked to identify the proposed variances from the form of agreement set forth in § 3286.1 of this title.

§ 3281.2 Designation of area.

An application for designation of an area as logically subject to development and/or operation under a unit or cooperative agreement may be filed, in triplicate, by any proponent of such an agreement through the authorized officer. Each copy of the application shall be accompanied by a map or diagram on a scale of not less than 1 inch to 1 mile, outlining the area sought to be designated under this section. The Federal, State, and privately owned land should be indicated on said map by distinctive symbols or colors and Federal geothermal leases and lease applications should be identified by serial number. Geological information, including the results of geophysical surveys, and such other information as may tend to show that unitization is necessary and advisable in the public interest should be furnished in triplicate. Geological and geophysical information and data so furnished will not be available for public inspection, as provided by 5 U.S.C. 552(b), without the consent of the proponent. The application and supporting data will be considered by the Director and the applicant will be informed of the decision reached. The designation of an area, pursuant to an application filed under this section, shall not create an exclusive right to submit an executed agreement for such area, nor preclude the inclusion of such area or any part thereof in another unit area.

§ 3281.3 Parties to unit or cooperative agreement.

The owners of any rights, title, or interest in the geothermal resources deposits to be developed and operated under an agreement can be regarded as proper parties to a proposed agreement. All such owners must be invited to join as parties to the agreement. If any owner fails or refuses to join the agreement, the proponent of the agreement should declare this to the authorized officer and should submit evidence of efforts made to obtain joinder of such owner and the reasons for nonjoinder.

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#### § 3281.4 State land.

Where State-owned land is to be included in the unit, approval of the agreement by appropriate State officials should be obtained prior to its submission to the Department for approval of the executed agreement. When authorized by the laws of the State in which the unitized land is situated, provisions may be made in the agreement accepting State law to the extent that they are applicable to non-Federal unitized land.

### Subpart 3282—Qualification of Unit Operator

#### § 3282.1 Qualifications of unit operator.

A unit operator must qualify as to citizenship in the same manner as those holding interests in geothermal leases issued under the Geothermal Steam Act of 1970. The unit operator may be an owner of a working interest in the unit area or such other party as may be selected by the owners of working interests and approved by the authorized officer. The unit operator shall execute an acceptance of the duties and obligations imposed by the agreement. No designation of, or change in, a unit operator will become effective unless and until approved by the authorized officer, and no such approval will be granted unless the unit operator is deemed qualified to fulfill the duties and obligations prescribed in the agreement.

### Subpart 3283—Filing and Approval of Documents

#### § 3283.1 Filing of documents and number of counterparts.

All proposals and supporting papers, instruments and documents submitted under this part shall be filed with the authorized officer, unless otherwise provided in this part or otherwise instructed by the Director.

(48 FR 44793, Sept. 30, 1983)

#### § 3283.2 Executed agreement.

(a) Where a duly executed agreement is submitted for Departmental approval, a minimum of 6 signed counterparts shall be filed. The same

### 43 CFR Ch. II (10-1-92 Edition)

number of counterparts shall be filed for documents supplementing, modifying or amending an agreement, including change of operator, designation of a new operator and notice of surrender, relinquishment or termination.

(b) The address of each signatory party to the agreement shall be inserted below the party's signature. Each signature shall be attested to by at least 1 witness, if not notarized. Corporate or other signatures made in a representative capacity shall be accompanied by evidence of the authorization of the signatories to act unless such evidence is already a matter of record in the Bureau of Land Management. (The parties may execute any number of counterparts of the agreement with the same force and effect as if all parties signed the same document, or may execute a ratification of consent in a separate instrument with like force and effect.)

(c) Any modification of an approved agreement shall require approval of the Secretary or his/her duly authorized representative under procedures similar to those cited in § 3283.2-1 of this title.

(48 FR 44793, Sept. 30, 1983)

#### § 3283.2-1 Approval of executed agreement.

A duly executed unit or cooperative agreement shall be approved by the Secretary or his/her duly authorized representative upon a determination that such agreement is necessary or advisable in the public interest and is for the purpose of properly conserving the natural resources, taking into account the environmental consequences of the action. Such approval shall be incorporated in a certificate appended to the agreement. No such agreement shall be approved unless at least 1 of the parties is a holder of a Federal lease embracing lands being committed to the agreement and unless the parties signatory to the agreement hold sufficient interests in the area to give effective control of operations therein.

(48 FR 44793, Sept. 30, 1983)

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#### § 3283.2-2 Review of executed agreement.

No more than 5 years after approval of any cooperative or unit plan of development or operation, and at least every 5 years thereafter, the authorized officer shall review each plan and, after notice and opportunity for comment, eliminate from such plan any lease or part of a lease not regarded as reasonably necessary for cooperative or unit operations under the plan. Such elimination shall be based on scientific evidence, and shall occur only when it is determined by the authorized officer to be for the purpose of conserving and properly managing the geothermal resource.

(54 FR 13887, Apr. 6, 1989 and 55 FR 26443, June 28, 1990)

#### § 3283.3 Participating area.

Each application for approval of a participating area, or revision thereof, shall be accompanied by 3 copies of a substantiating geologic and engineering report, structure contour map(s), cross-section or other pertinent data.

(48 FR 44793, Sept. 30, 1983)

#### § 3283.4 Plan of development.

Plans of development and operation, plans of further development and operation and proposed participating areas and revisions thereof shall be submitted in quadruplicate.

(48 FR 44793, Sept. 30, 1983)

#### § 3283.5 Return of approved documents.

All instruments or documents other than plans of development and operation, plans of further development and operation and proposed participating areas and revisions thereof submitted for approval shall be submitted for approval in sufficient number to permit the approving official to return at least 1 approved counterpart.

(48 FR 44793, Sept. 30, 1983)

### Subpart 3284—[Reserved]

### Subpart 3285—Appeals

#### § 3285.1 Appeals.

Appeals from final orders or decisions issued under the regulations in

### § 3286.1

this part shall be made in the manner provided in Part 4 of this title.

### Subpart 3286—Model Forms

#### § 3286.1 Model unit agreement: unproven areas.

UNIT AGREEMENT FOR THE DEVELOPMENT AND OPERATION OF THE \_\_\_\_\_ UNIT AREA  
COUNTY OF \_\_\_\_\_, STATE  
OF \_\_\_\_\_

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\_\_\_\_ COUNTY \_\_\_\_\_ UNIT AGREEMENT

This Agreement entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between the parties subscribing, ratifying, or consenting hereto, and herein referred to as the "parties hereto".

WITNESSETH: Whereas the parties hereto are the owners of working, royalty, or other geothermal resources interests in land subject to this Agreement; and

Whereas the Geothermal Steam Act of 1970 (84 Stat. 1586), hereinafter referred to as the "Act", authorizes Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating under

a cooperative or unit plan of development or operation of any geothermal resources pool, field, or like area, or any part thereof, for the purpose of more properly conserving the natural resources thereof, whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; and

Whereas the parties hereto hold sufficient interest in the \_\_\_\_\_ Unit Area covering the land herein described to effectively control operations therein; and

Whereas, it is the purpose of the parties hereto to conserve natural resources, prevent waste, and secure other benefits obtainable through development and operations of the area subject to this Agreement under the terms, conditions, and limitations herein set forth;

Now, therefore, in consideration of the premises and the promises herein contained, the parties hereto commit to this agreement their respective interests in the below-defined Unit Area, and agree severally among themselves as follows:

#### ARTICLE I—ENABLING ACT AND REGULATIONS

1.1 The Act and all valid pertinent regulations, including operating and unit plan regulations, heretofore or hereafter issued thereunder are accepted and made a part of this agreement as to Federal lands.

1.2 As to non-Federal lands, the geothermal resources operating regulations in effect as of the effective date hereof governing drilling and producing operations, not inconsistent with the laws of the State in which the non-Federal land is located, are hereby accepted and made a part of this agreement.

#### ARTICLE II—DEFINITIONS

2.1 The following terms shall have the meanings here indicated:

(a) *Geothermal lease*. A lease issued under the act of December 24, 1970 (84 Stat. 1566), pursuant to the leasing regulations contained in 43 CFR Group 3200 and, unless the context indicates otherwise, "lease" shall mean a geothermal lease.

(b) *Unit area*. The area described in Article III of this Agreement.

(c) *Unit operator*. The person, association, partnership, corporation, or other business entity designated under this Agreement to conduct operations on Unitized Land as specified herein.

(d) *Participating area*. That part of the Unit Area which is deemed to be productive from a horizon or deposit and to which production would be allocated in the manner described in the unit agreement assuming that all lands are committed to the unit agreement.

(e) *Working interest*. The interest held in geothermal resources or in lands containing

the same by virtue of a lease, operating agreement, fee title, or otherwise, under which, except as otherwise provided in this Agreement, the owner of such interest is vested with the right to explore for, develop, produce and utilize such resources. The right delegated to the Unit Operator as such by this Agreement is not to be regarded as a Working interest.

(f) *Secretary*. The Secretary of the Interior or any person duly authorized to exercise powers vested in that officer.

(g) *Director*. The Director of the Bureau of Land Management.

(h) *Authorized officer*. Any person authorized by law or by lawful delegation of authority in the Bureau of Land Management to perform the duties described.

#### ARTICLE III—UNIT AREA AND EXHIBITS

3.1 The area specified on the map attached hereto marked "Exhibit A" is hereby designated and recognized as constituting the Unit Area, containing \_\_\_\_\_ acres, more or less.

The above-described Unit Area shall when practicable be expanded to include therein any additional lands or shall be contracted to exclude lands whenever such expansion or contraction is deemed to be necessary or advisable to conform with the purposes of this Agreement.

3.2 Exhibit A attached hereto and made a part hereof is a map showing the boundaries of the Unit Area, the boundaries and identity of tracts and leases in said area to the extent known to the Unit Operator.

3.3 Exhibit B attached hereto and made a part hereof is a schedule showing to the extent known to the Unit Operator the acreage, percentage, and kind of ownership of geothermal resources interests in all lands in the Unit Area.

3.4 Exhibits A and B shall be revised by the Unit Operator whenever changes in the Unit Area render such revision necessary, or when requested by the authorized officer, and not less than five copies of the revised Exhibits shall be filed with the authorized officer.

#### ARTICLE IV—CONTRACTION AND EXPANSION OF UNIT AREA

4.1 Unless otherwise specified herein, the expansion and/or contraction of the Unit Area contemplated in Article 3.1 hereof shall be effected in the following manner:

(a) Unit Operator either on demand of the Director or on its own motion and after prior concurrence by the Director, shall prepare a notice of proposed expansion or contraction describing the contemplated changes in the boundaries of the Unit Area, the reasons therefor, and the proposed ef-

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fective date thereof, preferably the first day of a month subsequent to the date of notice.

(b) Said notice shall be delivered to the authorized officer, and copies thereof mailed to the last known address of each Working Interest Owner, Lessee, and Lessor whose interests are affected, advising that 30 days will be allowed for submission to the Unit Operator of any objections.

(c) Upon expiration of the 30-day period provided in the preceding item (b) hereof, Unit Operator shall file with the authorized officer evidence of mailing of the notice of expansion or contraction and a copy of any objections thereto which have been filed with the Unit Operator, together with an application in sufficient number, for approval of such expansion or contraction and with appropriate joinders.

(d) After due consideration of all pertinent information, the expansion or contraction shall, upon approval by the authorized officer, become effective as of the date prescribed in the notice thereof.

4.2 Unitized Leases. Insofar as they cover any lands which are excluded from the Unit Area under any of the provisions of this Article IV may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions contained in the Act, and the lease or leases and amendments thereto, except that operations and/or production under this Unit Agreement shall not serve to maintain or continue the excluded portion of any lease.

4.3 All legal subdivisions of unitized lands (i.e., 40 acres by Governmental survey or its nearest lot or tract equivalent in instances of irregular surveys), no part of which is entitled to be within a Participating Area on the fifth anniversary of the effective date of the initial Participating Area established under this Agreement, shall be eliminated automatically from this Agreement effective as of said fifth anniversary and such lands shall no longer be a part of the Unit Area and shall no longer be subject to this Agreement unless diligent drilling operations are in progress on an exploratory well on said fifth anniversary. In which event such lands shall not be eliminated from the Unit Area for as long as exploratory drilling operations are continued diligently with not more than four (4) months time elapsing between the completion of one exploratory well and the commencement of the next exploratory well.

4.4 An exploratory well, for the purposes of this Article IV is defined as any well, regardless of surface location, protected for completion in a zone or deposit below any zone or deposit for which a Participating Area has been established and is in effect, or any well, regardless of surface location, protected for completion at a subsurface location under Unitized Lands not entitled to be within a Participating Area.

4.5 In the event an exploratory well is completed during the four (4) months immediately preceding the fifth anniversary of the initial Participating Area established under this Agreement, lands not entitled to be within a Participating Area shall not be eliminated from this Agreement on said fifth anniversary, provided the drilling of another exploratory well is commenced under an approved Plan of Operation within four (4) months after the completion of said well. In such event, the land not entitled to be in participation shall not be eliminated from the Unit Area so long as exploratory drilling operations are continued diligently with not more than four (4) months time elapsing between the completion of one exploratory well and the commencement of the next exploratory well.

4.6 With prior approval of the authorized officer, a period of time in excess of four (4) months may be allowed to elapse between the completion of one well and the commencement of the next well without the automatic elimination of nonparticipating acreage.

4.7 Unitized lands proved productive by drilling operations which serve to delay automatic elimination of lands under this Article IV shall be incorporated into a Participating Area (or Areas) in the same manner as such lands would have been incorporated in such areas had such lands been proven productive during the year preceding said fifth anniversary.

4.8 In the event nonparticipating lands are retained under this Agreement after the fifth anniversary of the initial Participating Area as a result of exploratory drilling operations, all legal subdivisions of unitized land (i.e., 40 acres by Government survey or its nearest lot or tract equivalent in instances of irregular surveys), no part of which is entitled to be within a Participating Area shall be eliminated automatically as of the 121 day, or such later date as may be established by the authorized officer, following the completion of the last well recognized as delaying such automatic elimination beyond the fifth anniversary of the initial Participating Area established under this Agreement.

#### ARTICLE V—UNITIZED LAND AND UNITIZED SUBSTANCES

5.1 All land committed to this Agreement shall constitute land referred to herein as "Unitized Land". All geothermal resources in and produced from any and all formations of the Unitized Land are unitized under the terms of this agreement and herein are called "Unitized Substances".

## ARTICLE VI—UNIT OPERATOR

6.1 ----- is hereby designated as Unit Operator and by signature hereto as Unit Operator agrees and consents to accept the duties and obligations of Unit Operator for the discovery, development, production, distribution and utilization of Unitized Substances as herein provided. Whenever reference is made herein to the Unit Operator, such reference means the Unit Operator acting in that capacity and not as an owner of interest in Unitized Substances, and the term "Working Interest Owner" when used herein shall include or refer to Unit Operator as the owner of a Working Interest when such an interest is owned by it.

## ARTICLE VII—RESIGNATION OR REMOVAL OF UNIT OPERATOR

7.1 Prior to the establishment of a Participating Area, hereunder, the Unit Operator shall have the right to resign. Such resignation shall not become effective so as to release Unit Operator from the duties and obligations of Unit Operator or terminate Unit Operators rights, as such, for a period of six (6) months after notice of its intention to resign has been served by Unit Operator on all Working Interest Owners and the authorized officer; nor until all wells then drilled hereunder are placed in a satisfactory condition for suspension or abandonment whichever is required by the authorized officer, unless a new Unit Operator shall have been selected and approved and shall have taken over and assumed the duties and obligations of Unit Operator prior to the expiration of said period.

7.2 After the establishment of a Participating Area hereunder Unit Operator shall have the right to resign in the manner and subject to the limitations provided in 7.1 above.

7.3 The Unit Operator may, upon default or failure in the performance of its duties or obligations hereunder, be subject to removal by the same percentage vote of the owners of Working Interests as herein provided for the selection of a new Unit Operator. Such removal shall be effective upon notice thereof to the authorized officer.

7.4 The resignation or removal of Unit Operator under this Agreement shall not terminate its right, title, or interest as the owner of a Working Interest or other interest in Unitized Substances, but upon the resignation or removal of Unit Operator becoming effective, such Unit Operator shall deliver possession of all wells, equipment, material, and appurtenances used in conducting the unit operations to the new duly qualified successor Unit Operator or, if no such new unit operator is elected, to the common agent appointed to represent the Working Interest Owners in any action

taken hereunder to be used for the purpose of conducting operations hereunder.

7.5 In all instances of resignation or removal, until a successor Unit Operator is selected and approved as hereinafter provided, the Working Interest Owners shall be jointly responsible for performance of the duties and obligations of Unit Operator, and shall not later than 30 days before such resignation or removal becomes effective appoint a common agent to represent them in any action to be taken hereunder.

7.6 The resignation of Unit Operator shall not release Unit Operator from any liability for any default by it hereunder occurring prior to the effective date of its resignation.

## ARTICLE VIII—SUCCESSOR UNIT OPERATOR

8.1 If, prior to the establishment of a Participating Area hereunder, the Unit Operator shall resign as Operator, or shall be removed as provided in Article VII, a successor Unit Operator may be selected by vote of the owners of a majority of the Working Interests in Unitized Substances, based on their respective shares, on an acreage basis, in the Unitized Land.

8.2 If, after the establishment of a Participating Area hereunder, the Unit Operator shall resign as Unit Operator, or shall be removed as provided in Article VII, a successor Unit Operator may be selected by vote of the owners of a majority of the Working Interests in Unitized Substances, based on their respective shares, on a participating acreage basis. Provided, that, if a majority but less than 60 percent of the Working Interest in the Participating Lands is owned by the party to this agreement, a concurring vote of one or more additional Working Interest Owners owning 10 percent or more of the Working Interest in the participating land shall be required to select a new Unit Operator.

8.3 The selection of a successor Unit Operator shall not become effective until:

(a) The Unit Operator so selected shall accept in writing the duties, obligations and responsibilities of the Unit Operator, and

(b) The selection shall have been approved by the authorized officer.

8.4 If no successor Unit Operator is selected and qualified as herein provide the Director at his election may declare this Agreement terminated.

## ARTICLE IX—ACCOUNTING PROVISIONS AND UNIT OPERATING AGREEMENT

9.1 Costs and expenses incurred by Unit Operator in conducting unit operations hereunder shall be paid and apportioned among and borne by the owners of Working Interests; all in accordance with the agreement or agreements entered into by and be-

tween the Unit Operator and the owners of Working Interests, whether one or more, separately or collectively.

9.2 Any agreement or agreements entered into between the Working Interest Owners and the Unit Operator as provided in this Article, whether one or more, are herein referred to as the "Unit Operating Agreement".

9.3 The Unit Operating Agreement shall provide the manner in which the Working Interest Owners shall be entitled to receive their respective share of the benefits accruing hereto in conformity with their underlying operating agreements, leases, or other contracts, and such other rights and obligations, as between Unit Operator and the Working Interest Owners.

9.4 Neither the Unit Operating Agreement nor any amendment thereto shall be deemed either to modify any of the terms and conditions of this Agreement or to relieve the Unit Operator of any right or obligation established under this Agreement.

9.5 In case of any inconsistency or conflict between this Agreement and the Unit Operating Agreement, this Agreement shall govern.

9.6 Three true copies of any Unit Operating Agreement executed pursuant to this Article IX shall be filed with the authorized officer prior to approval of this Agreement.

## ARTICLE X—RIGHTS AND OBLIGATIONS OF UNIT OPERATOR

10.1 The right, privilege, and duty of exercising any and all rights of the parties hereto which are necessary or convenient for prospecting, producing, distributing or utilizing Unitized Substances are hereby delegated to and shall be exercised by the Unit Operator as provided in this Agreement in accordance with a Plan of Operations approved by the authorized officer.

10.2 Upon request by Unit Operator, acceptable evidence of title to geothermal resources interests in the Unitized Land shall be deposited with the Unit Operator, and together with this Agreement shall constitute and define the rights, privileges, and obligations of Unit Operator.

10.3 Nothing in this Agreement shall be construed to transfer title to any land or to any lease or operating agreement, it being understood that the Unit Operator, in its capacity as Unit Operator shall exercise the rights of possession and use vested in the parties hereto only for the purposes specified in this Agreement.

10.4 The Unit Operator shall take such measures as the authorized officer deems appropriate and adequate to prevent drainage of Unitized Substances from Unitized Land by wells on land not subject to this Agreement.

10.5 The Director is hereby vested with authority to alter or modify from time to

time, in his discretion, the rate of prospecting and development and the quantity and rate of production under this Agreement.

## ARTICLE XI—PLAN OF OPERATION

11.1 Concurrently with the submission of this Agreement for approval, Unit Operator shall submit an acceptable Initial Plan of Operation. Said plan shall be as complete and adequate as the authorized officer may determine to be necessary for timely exploration and/or development and to insure proper protection of the environment and conservation of the natural resources of the Unit Area.

11.2 Prior to the expiration of the Initial Plan of Operation, or any subsequent Plan of Operation, Unit Operator shall submit for approval of the authorized officer an acceptable subsequent Plan of Operation for the Unit Area which, when approved by the authorized officer, shall constitute the exploratory and/or development drilling and operating obligations of Unit Operators under this Agreement for the period specified therein.

11.3 Any plan of Operation submitted hereunder shall:

(a) Specify the number and locations of any wells to be drilled and the proposed order and time for such drilling, and

(b) To the extent practicable, specify the operating practices regarded as necessary and advisable for proper conservation of natural resources and protection of the environment in compliance with section 11.

11.4 The Plan of Operation submitted concurrently with this Agreement for approval shall prescribe that within six (6) months after the effective date hereof, the Unit Operator shall begin to drill an adequate test well at a location approved by the authorized officer, unless on such effective date a well is being drilled conformably with the terms, hereof, and thereafter continue such drilling diligently until the information has been tested or until at a lesser depth unitized substances shall be discovered which can be produced in paying quantities (i.e., quantities sufficient to repay the costs of drilling, completing, and producing operations, with a reasonable profit) or the Unit Operator shall at any time establish to the satisfaction of the authorized officer that further drilling of said well would be unwarranted or impracticable. Provided, however, That Unit Operator shall not in any event be required to drill said well to a depth in excess of feet.

11.5 The Initial Plan of Operation and/or subsequent Plans of Operation submitted under this article shall provide that the Unit Operator shall initiate a continuous drilling program providing for drilling of no less than one well at a time, and allowing no



more than six (6) months time to elapse between completion of one well and the beginning of the next well, until a well capable of producing Unitized Substances in paying quantities is completed to the satisfaction of the authorized officer or until it is reasonably proved that the Unitized Land is incapable of producing Unitized Substances in paying quantities in the formations drilled under this Agreement.

11.6 When warranted by unforeseen circumstances, the authorized officer may grant a single extension of any or all of the critical dates for exploratory drilling operations cited in the Initial or subsequent Plans of Operation. No such extension shall exceed a period of four (4) months for each well, required by the Initial Plan of Operation.

11.7 Until there is actual production of Unitized Substances, the failure of Unit Operator to timely drill any of the wells provided for in Plans of Operation required under this Article XI or to timely submit an acceptable subsequent Plan of Operations, shall, after notice of default or notice of prospective default to Unit Operator by the authorized officer and after failure of Unit Operator to remedy any actual default within a reasonable time (as determined by the authorized officer), result in automatic termination of this Agreement effected as of the date of the default, as determined by the authorized officer.

11.8 Separate Plans of Operations may be submitted for separate productive zones, subject to the approval of the authorized officer. Also subject to the approval of the authorized officer, Plans of Operation shall be modified or supplemented when necessary to meet changes in conditions or to protect the interest of all parties to this Agreement.

#### ARTICLE XII—PARTICIPATING AREAS

12.1 Prior to the commencement of production of Unitized Substances, the Unit Operator shall submit for approval by the authorized officer a schedule (or schedules) of all land then regarded as reasonably proved to be productive from a pool or deposit discovered or developed; all lands in said schedule (or schedules), on approval of the authorized officer, will constitute a Participating Area (or Areas) effective as of the date production commences or the effective date of this Unit Agreement, whichever is later. Said schedule (or schedules) shall also set forth the percentage of Unitized Substances to be allocated, as herein provided, to each tract in the Participating Area (or Areas) so established and shall govern the allocation of production commencing with the effective date of the Participating Area.

12.2 A separate Participating Area shall be established for each separate pool or deposit of Unitized Substances or for any group thereof which is produced as a single

pool or deposit and any two or more Participating Areas so established may be combined into one, on approval of the authorized officer. The effective date of any Participating Area established after the commencement of actual production of Unitized Substances shall be the first of the month in which is obtained the knowledge or information on which the establishment of said Participating Area is based, unless a more appropriate effective date is proposed by the Unit Operator and approved by the authorized officer.

12.3 Any Participating Area (or Areas) established under 12.1 or 12.2 above shall, subject to the approval of the authorized officer, be revised from time to time to include additional land then regarded as reasonably proved to be productive from the pool or deposit for which the Participating Area was established or to include lands necessary to unit operations, or to exclude land then regarded as reasonably proved not to be productive from the pool or deposit for which the Participating Area was established or to exclude land not necessary to unit operations and the schedule (or schedules) of allocation percentages shall be revised accordingly.

12.4 Subject to the limitation cited in 12.1 hereof, the effective date of any revision of a Participating Area established under Articles 12.1 or 12.2 shall be the first of the month in which is obtained the knowledge or information on which such revision is predicated, provided, however, that a more appropriate effective date may be used if justified by the Unit Operator and approved by the authorized officer.

12.5 No land shall be excluded from a Participating Area on account of depletion of the Unitized Substances, except that any Participating Area established under the provisions of this Article XII shall terminate automatically whenever all operations are abandoned in the pool or deposit for which the Participating Area was established.

12.6 Nothing herein contained shall be construed as requiring any retroactive adjustment for production obtained prior to the effective date of the revision of a Participating Area.

#### ARTICLE XIII—ALLOCATION OF UNITIZED SUBSTANCES

13.1 All Unitized Substances produced from a Participating Area, established under this Agreement, shall be deemed to be produced equally on an acreage basis from the several tracts of Unitized Land within the Participating Area established for such production.

13.2 For the purpose of determining any benefits accruing under this Agreement, each Tract of Unitized Land shall have allo-

cated to it such percentage of said production as the number of acres in the Tract included in the Participating Area bears to the total number of acres of Unitized Land in said Participating Area.

13.3 Allocation of production hereunder for purposes other than for settlement of the royalty obligations of the respective Working Interest Owners, shall be on the basis prescribed in the Unit Operating Agreement whether in conformity with the basis of allocation set forth above or otherwise.

13.4 The Unitized Substances produced from a Participating Area shall be allocated as provided herein regardless of whether any wells are drilled on any particular part or tract of said Participating Area.

#### ARTICLE XIV—RELINQUISHMENT OF LEASES

14.1 Pursuant to the provisions of the Federal leases and 43 CFR 3244.1, a lessee of record shall, subject to the provisions of the Unit Operating Agreement, have the right to relinquish any of its interests in leases committed hereto, in whole or in part; provided, that no relinquishment shall be made of interests in land within a Participating Area without the prior approval of the Director.

14.2 A Working Interest Owner may exercise the right to surrender, when such right is vested in it by any non-Federal lease, sublease, or operating agreement, provided that each party who will or might acquire the Working Interest in such lease by such surrender or by forfeiture is bound by the terms of this Agreement, and further provided that no relinquishment shall be made of such land within a Participating Area without the prior written consent of the non-Federal Lessor.

14.3 If, as the result of relinquishment, surrender, or forfeiture the Working Interest becomes vested in the fee owner or lessor of the Unitized Substances, such owner may:

- (1) Accept those Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement; or
- (2) Lease the portion of such land as is included in a Participating Area established hereunder, subject to this Agreement and the Unit Operating Agreement; and provide for the independent operation of any part of such land that is not then included within a Participating Area established hereunder.

14.4 If the fee owner or lessor of the Unitized Substances does not, (1) accept the Working Interest rights and obligations subject to this Agreement and the Unit Operating Agreement, or (2) lease such lands as provided in 14.3 above within six (6) months after the relinquished, surrendered, or forfeited Working Interest becomes vested in said fee owner or lessor, the Working Inter-

est benefits and obligations accruing to such land under this Agreement and the Unit Operating Agreement shall be shared by the owners of the remaining unitized Working Interests in accordance with their respective Working Interest ownerships, and such owners of Working Interests shall compensate the fee owner or lessor of Unitized Substances in such lands by paying sums equal to the rentals, minimum royalties, and royalties applicable to such lands under the lease or leases in effect when the Working Interests were relinquished, surrendered, or forfeited.

14.5 Subject to the provisions of 14.4 above, an appropriate accounting and settlement shall be made for all benefits accruing to or payments and expenditures made or incurred on behalf of any surrendered or forfeited Working Interest subsequent to the date of surrender or forfeiture, and payment of any moneys found to be owing by such an accounting shall be made as between the parties within thirty (30) days.

14.6 In the event no Unit Operating Agreement is in existence and a mutually acceptable agreement cannot be consummated between the proper parties, the authorized officer may prescribe such reasonable and equitable conditions of agreement as he deems warranted under the circumstances.

14.7 The exercise of any right vested in a Working Interest Owner to reassign such Working Interest to the party from whom obtained shall be subject to the same conditions as set forth in this Article XIV in regard to the exercise of a right to surrender.

#### ARTICLE XV—RENTALS AND MINIMUM ROYALTIES

15.1 Any unitized lease on non-Federal land containing provisions which would terminate such lease unless drilling operations are commenced upon the land covered thereby within the time therein specified or rentals are paid for the privilege of deferring such drilling operations, the rentals required thereby shall, notwithstanding any other provisions of this Agreement, be deemed to accrue as to the portion of the lease not included within a Participating Area and become payable during the term thereof as extended by this Agreement, and until the required drillings are commenced upon the land covered thereby.

15.2 Rentals are payable on Federal leases on or before the anniversary date of each lease year; minimum royalties accrue from the anniversary date of each lease year and are payable at the end of the lease year.

15.3 Beginning with the lease year commencing on or after ----- and for each lease year thereafter, rental or mini-

imum royalty for lands of the United States subject to this Agreement shall be made on the following basis:

(a) An advance annual rental in the amount prescribed in unutilized Federal leases, in no event creditable against production royalties, shall be paid for each acre or fraction thereof which is not within a Participating Area.

(b) A minimum royalty shall be charged at the beginning of each lease year (such minimum royalty to be due as of the last day of the lease year and payable within thirty (30) days thereafter) of \$2 an acre or fraction thereof, for all Unutilized Acreage within a Participating Area as of the beginning of the lease year. If there is production during the lease year the deficit, if any, between the actual royalty paid and the minimum royalty prescribed herein shall be paid.

16.4 Rental or minimum royalties due on leases committed hereto shall be paid by Working Interest Owners responsible therefor under existing contracts, laws, and regulations, or by the Unit Operator.

16.5 Settlement for royalty interest shall be made by Working Interest Owners responsible therefor under existing contracts, laws, and regulations, or by the Unit Operator, on or before the last day of each month for Unutilized Substances produced during the preceding calendar month.

16.6 Royalty due the United States shall be computed as provided in the operating regulations and paid in value as to all Unutilized Substances on the basis of the amounts thereof allocated to unutilized Federal land as provided herein at the royalty rate or rates specified in the respective Federal leases.

16.7 Nothing herein contained shall operate to relieve the lessees of any land from their respective lease obligations for the payment of any rental, minimum royalty, or royalty due under their leases.

#### ARTICLE XVI—OPERATIONS ON NONPARTICIPATING LAND

16.1 Any party hereto owning or controlling the Working Interest in any Unutilized Land having thereon a regular well location may, with the approval of the authorized officer and at such party's sole risk, costs, and expense, drill a well to test any formation of deposit for which a Participating Area has not been established or to test any formation or deposit for which a Participating Area has been established if such location is not within said Participating Area, unless within 30 days of receipt of notice from said party of his intention to drill the well, the Unit Operator elects and commences to drill such a well in like manner as other wells are drilled by the Unit Operator under this Agreement.

16.2 If any well drilled by a Working Interest Owner other than the Unit Operator

proves that the land upon which said well is situated may properly be included in a Participating Area, such Participating Area shall be established or enlarged as provided in this Agreement and the well shall thereafter be operated by the Unit Operator in accordance with the terms of this Agreement and the Unit Operating Agreement.

#### ARTICLE XVII—LEASES AND CONTRACTS CONFORMED AND EXTENDED

17.1 The terms, conditions, and provisions of all leases, subleases, and other contracts relating to exploration, drilling, development, or utilization of geothermal resources on lands committed to this Agreement, are hereby expressly modified and amended only to the extent necessary to make the same conform to the provisions hereof, otherwise said leases, subleases, and contracts shall remain in full force and effect.

17.2 The parties hereto consent that the Secretary shall, by his approval hereof, modify and amend the Federal leases committed hereto and the regulations in respect thereto to the extent necessary to conform said leases and regulations to the provisions of this Agreement.

17.3 The development and/or operation of lands subject to this Agreement under the terms hereof shall be deemed full performance of any obligations for development and operation with respect to each and every separately owned tract subject to this Agreement, regardless of whether there is any development of any particular tract of the Unit Area.

17.4 Drilling and/or producing operations performed hereunder upon any tract of Unutilized Lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of Unutilized Land.

17.5 Suspension of operations and/or production on all Unutilized Lands pursuant to direction or consent of the Secretary or his duly authorized representative shall be deemed to constitute such suspension pursuant to such direction or consent as to each and every tract of Unutilized Land. A suspension of operations and/or production limited to specified lands shall be applicable only to such lands.

17.6 Subject to the provisions of Article XV hereof and 17.10 of this Article, each lease, sublease, or contract relating to the exploration, drilling, development, or utilization of geothermal resources of lands other than those of the United States committed to this Agreement, is hereby extended beyond any such term so provided therein so that it shall be continued for and during the term of this Agreement.

17.7 Subject to the lease renewal and the readjustment provision of the Act, any Fed-

### Bureau of Land Management, Interior

eral lease committed hereto may, as to the Unutilized Lands, be continued for the term so provided therein, or as extended by law. This subsection shall not operate to extend any lease or portion thereof as to lands excluded from the Unit Area by the contract thereon.

17.8 Each sublease or contract relating to the operations and development of Unutilized Substances from lands of the United States committed to this Agreement shall be continued in force and effect for and during the term of the underlying lease.

17.9 Any Federal lease heretofore or hereafter committed to any such unit plan embracing lands that are in part within and in part outside of the area covered by any such plan shall be segregated into separate leases as to the lands committed and the lands not committed as of the effective date of unitization.

17.10 In the absence of any specific lease provision to the contrary, any lease, other than a Federal lease, having only a portion of its land committed hereto shall be segregated as to the portion committed and the portion not committed, and the provisions of such lease shall apply separately to such segregated portions commencing as of the effective date hereof. In the event any such lease provides for a lump-sum rental payment, such payment shall be prorated between the portions so segregated in proportion to the acreage of the respective tracts.

17.11 Upon termination of this Agreement, the leases covered hereby may be maintained and continued in force and effect in accordance with the terms, provisions, and conditions of the Act, the lease or leases, and amendments thereto.

#### ARTICLE XVIII—EFFECTIVE DATE AND TERM

18.1 This Agreement shall become effective upon approval by the Secretary or his duly authorized representative and shall terminate five (5) years from said effective date unless:

(a) Such date of expiration is extended by the Director, or

(b) Unutilized Substances are produced or utilized in commercial quantities in which event this Agreement shall continue for so long as Unutilized Substances are produced or utilized in commercial quantities, or

(c) This Agreement is terminated prior to the end of said five (5) year period as heretofore provided.

18.2 This Agreement may be terminated at any time by the owners of a majority of the Working Interests, on an acreage basis, with the approval of the authorized officer. Notice of any such approval shall be given by the Unit Operator to all parties hereto.

#### ARTICLE XIX—APPEARANCES

19.1 Unit Operator shall, after notice to other parties affected, have the right to appear for and on behalf of any and all interests affected hereby before the Department of the Interior, and to appeal from decisions, orders or rulings issued under the regulations of said Department, or to apply for relief from any of said regulations or in any proceedings relative to operations before the Department of the Interior or any other legally constituted authority. Provided, however, That any interested parties shall also have the right, at its own expense, to be heard in any such proceeding.

#### ARTICLE XX—NO WAIVER OF CERTAIN RIGHTS

20.1 Nothing contained in this Agreement shall be construed as a waiver by any party hereto of the right to assert any legal or constitutional right or defense pertaining to the validity or invalidity of any law of the State wherein lands subject to this Agreement are located, or of the United States, or regulations issued thereunder, in any way affecting such party or as a waiver by any such party of any right beyond his or its authority to waive.

#### ARTICLE XXI—UNAVOIDABLE DELAY

21.1 The obligations imposed by this Agreement requiring Unit Operator to commence or continue drilling or to produce or utilize Unutilized Substances from any of the land covered by this Agreement, shall be suspended while, but only so long as, Unit Operator, despite the exercise of due care and diligence, is prevented from complying with such obligations, in whole or in part, by strikes, Acts of God, Federal or other applicable law, Federal or other authorized governmental agencies, unavoidable accidents, uncontrollable delays in transportation, inability to obtain necessary materials in open market, or other matters beyond the reasonable control of Unit Operator, whether similar to matters herein enumerated or not.

21.2 No unit obligation which is suspended under this section shall become due less than thirty (30) days after it has been determined that the suspension is no longer applicable.

21.3 Determination of creditable "Unavoidable Delay" time shall be made by the Unit Operator subject to approval of the authorized officer.

#### ARTICLE XXII—POSTPONEMENT OF OBLIGATIONS

22.1 Notwithstanding any other provisions of this Agreement, the Director, on his own initiative or upon appropriate justification by Unit Operator, may postpone any obligation established by and under this Agreement to commence or continue drill-



partnership or association between the parties hereto or any of them.

ARTICLE XXXI—SPECIAL FEDERAL LEASE STIPULATIONS AND/OR CONDITIONS

31.1 Nothing in this Agreement shall modify special lease stipulations and/or conditions applicable to lands of the United States. No modification of the conditions of lands under the jurisdiction of any Federal agency is authorized except with prior consent in writing whereby the authorizing official specifies the modification permitted. In witness whereof, the parties hereto have caused this Agreement to be executed and have set opposite their respective names the date of execution.

Unit operator (as unit operator and as working interest owner)

Witnesses:

Witnesses:

By Working Interest Owners:

Witnesses:

By Other Interest Owners:

[38 FR 36073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44793, Sept. 30, 1983]

held without liability for interest until the dispute is finally settled: Provided, That, as to Federal land or leases, no payments of funds due the United States shall be withheld, but such funds shall be deposited as directed by the authorized officer to be held as unearned money pending final settlement of the title dispute, and then applied as earned or returned in accordance with such final settlement.

ARTICLE XXIX—TAXES

29.1 The Working Interest Owners shall render and pay for their accounts and the accounts of the owners of nonworking interest all valid taxes on or measured by the Utilized Substances in and under or that may be produced, gathered, and sold or utilized from the land subject to this Agreement after the effective date hereof.

29.2 The Working Interest Owners on each tract may charge a proper proportion of the taxes paid under 29.1 hereof to the owners of nonworking interests in said tract, and may reduce the allocated share of each royalty owner for taxes so paid. No taxes shall be charged to the United States or the State of \_\_\_\_\_ or to any lessor who has a contract with his lessee which requires the lessee to pay such taxes.

ARTICLE XXX—RELATION OF PARTIES

30.1 It is expressly agreed that the relation of the parties hereto is that of independent contractors and nothing in this Agreement contained, expressed, or implied, nor any operations conducted hereunder, shall create or be deemed to have created a

may accrue hereunder in behalf of such nonworking interest. A nonworking interest may not be committed to this Agreement unless the corresponding Working Interest is committed hereto.

26.5 Except as may otherwise herein be provided, subsequent jointers to this Agreement shall be effective as of the first day of the month following the filing with the authorized officer of duly executed counterparts of all or any papers necessary to establish effective commitment of any tract to this Agreement unless objection to such jointer is duly made within sixty (60) days by the authorized officer.

ARTICLE XXVI—COVENANTS RUN WITH THE LAND

26.1 The covenants herein shall be construed to be covenants running with the land with respect to the interest of the parties hereto and their successors in interest until this Agreement terminates, and any grant, transfer, or conveyance of interest in land or leases subject hereto shall be and hereby is conditioned upon the assumption of all privileges and obligations hereunder by the grantee, transferee, or other successor in interest.

26.2 No assignment or transfer of any Working Interest or other interest subject hereto shall be binding upon Unit Operator until the first day of the calendar month after Unit Operator is furnished with the original, photostatic, or certified copy of the instrument of transfer.

ARTICLE XXVII—NOTICES

27.1 All notices, demands or statements required hereunder to be given or rendered to the parties hereto shall be deemed fully given if given in writing and personally delivered or certified mail, addressed to such party or parties at their respective addresses set forth in connection with the signatures hereto or to the ratification or consent hereto or to such other address as any such party may have furnished in writing to party sending the notice, demand or statement.

ARTICLE XXVIII—LOSS OF TITLE

28.1 In the event title to any tract of Utilized Land shall fall and the true owner cannot be induced to join in this Agreement, such tract shall be automatically regarded as not committed hereto and there shall be such readjustment of future costs and benefits as may be required on account of the loss of such title.

28.2 In the event of a dispute as to title as to any royalty, Working Interest, or other interests subject hereto, payment or delivery on account thereof may be withheld

ing or to operate on or produce Utilized Substances from lands covered by this Agreement when in his judgement, circumstances warrant such action.

ARTICLE XXIII—NONDISCRIMINATION

23.1 In connection with the performance of work under this Agreement, the Operator agrees to comply with all of the provisions of section 202 (1) to (7) inclusive, of Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303), which are hereby incorporated by reference in this Agreement.

ARTICLE XXIV—COUNTERPARTS

24.1 This Agreement may be executed in any number of counterparts, no one of which needs to be executed by all parties, or may be ratified or consented to by separate instruments in writing specifically referring hereto, and shall be binding upon all parties who have executed such a counterpart, ratification or consent hereto, with the same force and effect as if all such parties had signed the same document.

ARTICLE XXV—SUBSEQUENT JOINDER

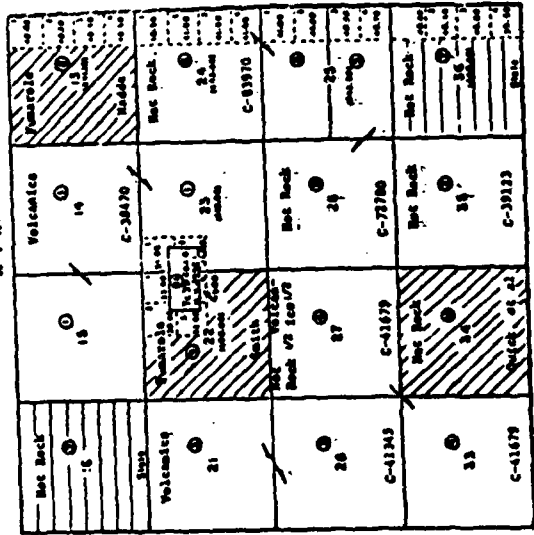
25.1 If the owner of any substantial interest in geothermal resources under a tract within the Unit Area fails or refuses to subscribe or consent to this Agreement, the owner of the Working Interest in that tract may withdraw said tract from this Agreement by written notice delivered to the authorized officer and the Unit Operator prior to the approval of this Agreement by the authorized officer.

25.2 Any geothermal resources interests in lands within the Unit Area not committed hereto prior to approval of this Agreement may thereafter be committed by the owner or owners thereof subscribing or consenting to this Agreement, and, if the interest is a Working Interest, by the owner of such interest also subscribing to the Unit Operating Agreement.

25.3 After operations are commenced hereunder, the right of subsequent jointer, as provided in this Article XXV by a working interest owner is subject to such requirements or approvals, if any, pertaining to such jointer, as may be provided for in the Unit Operating Agreement. Jointer to the Unit Agreement by a Working Interest Owner, at any time, must be accompanied by appropriate jointer to the Unit Operating Agreement, if more than one committed Working Interest Owner is involved, in order for the interest to be regarded as committed to this Unit Agreement.

25.4 After final approval hereof, jointer by a nonworking interest owner must be consented to in writing by the Working Interest Owner committed hereto and responsible for the payment of any benefits that

EXHIBIT A—BIG VAPOR UNIT AREA, T. 13 N., R. 10 W., M.D.M., California



① Nearest tract number as listed on Exhibit B  
☐ Public Land ☒ State Land ☒ Private Land

(38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983)

§ 3286.1-2 Model Exhibit "B".

EXHIBIT B—BIG VAPOR UNIT AREA, NAPA COUNTY, CALIF., T. 13 N., R. 10 W.

Tract No.	Description of land	Number of acres	Serial number and expiration date of lease	Basic royalty and ownership percentage	Lessee of record	Working interest and percentage
1	Federal land Sec 14: All Sec 15: All Sec 23: Lot 1, 2, 3, 4, NE 1/4, E 1/4 NW 1/4, Sec 36: All	1,980.00	36470 7-31-82	United States: All	Volcanica, Inc.	Volcanica, Inc.: All
2	Sec 21: All	640.00	39123 7-31-82	do	O. H. Boiler	Hot Rock Co.: All
3	Sec 28: All	1,280.00	41345 7-31-81	do	C. S. Waters—50% D. F. Mann—50%	Volcanica Co.: 50% Hot Rock Co.: 50%
4	Sec 27: All	1,280.00	41679	do	H. C. Pipes	Fumarole, Ltd.: All
5	Sec 26: All	961.50	71278	do	Hot Rock Co.	Hot Rock Co.: All
6	Sec 24: All	965.80	8-31-82 63070	do	H. C. Pipes	do

Tract No.	Description of land	Number of acres	Serial number and expiration date of lease	Basic royalty and ownership percentage	Lessee of record	Working interest and percentage
6 Federal tracts 7,017.30 acres or 68.47% of unit area						
7	California State land Sec 16: All Sec 36: All	1,280.60	65-87430	State of California: All	Hot Rock Co.	Hot Rock Co.: All
1 State tract 1,260.60 acres or 12.49% of unit area						
8	Patented land Sec 13: All Sec 22: Lot 1, 2, 3, 4, SW 1/4, NW 1/4	641.20 590.00	6-30-79 2-28-81	1 B. Haddie: All J. P. Smith: All	Fumarole, Ltd.	Fumarole, Ltd.: All
9	Sec 34: All	640.00	3-31-81	A. G. Ouch: 25% P. T. Land: 25% M. V. Jones: All	Hot Rock Co.	Hot Rock Co.: All
10	Tract 39	80.00	4-30-81	Unleased	Unleased	M. V. Jones: All
4 Patented tracts 1,951.20 acres or 19.04% of unit area						

Total—11 tracts 10,249.10 acres in entire unit area

(38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983)

§ 3286.2 Model unit bond.

COLLECTIVE CORPORATE SURETY

Know all men by these presents, That we, \_\_\_\_\_ (Name of Unit Operator) signing as Principal, for and on behalf of the record owners of unitized substances now or hereafter covered by the unit agreement for this \_\_\_\_\_ (Name of Unit) approved \_\_\_\_\_ (Date) \_\_\_\_\_ (Name and address of Surety) as Surety are jointly and severally held and firmly bound unto the United States of America in the sum of \_\_\_\_\_ (Amount of bond) Dollars, lawful money of the United States, for the use and benefit of and to be paid to the United States and any entryman or patentee of any portion of the unitized land, heretofore entered or patented with the reservation of the geothermal resources deposited to the United States, for which payment well and truly to be made, we bind ourselves, each of us, and each of our heirs, executors, administrators, successors, and assigns by these presents.

The condition of the foregoing obligation is such that, whereas the Secretary on \_\_\_\_\_ (Date) approved under the provisions of the Geothermal Steam Act of 1970, a unit agreement for the development and operation of the \_\_\_\_\_ (Name of Unit and State); and

Whereas said Principal and record owners of unitized substances, pursuant to said unit agreement, have entered into certain covenants and agreements as set forth therein, under which operations are to be conducted; and

Whereas said Principal as Unit Operator has assumed the duties and obligations of the respective owners of unitized substances as defined in said unit agreement; and

Whereas said Principal and surety agree to remain bound in the full amount of the bond for failure to comply with the terms of the unit agreement, and the payment of rentals, minimum royalties, and royalties due under the Federal leases committed to said unit agreement; and

Whereas the Surety hereby waives any right of notice of and agrees that this bond may remain in force and effect notwithstanding:

(a) Any additions to or change in the ownership of the unitized substances herein described.

(b) Any suspension of the drilling or producing requirements or waiver, suspension or reduction of rental or minimum royalty payments or reduction of royalties pursuant to applicable laws or regulations thereunder; and

Whereas said Principal and Surety agree to the payment of compensatory royalty under the regulations of the Interior Department;

partment in lieu of drilling necessary offset wells in the event of drainage; and Whereas nothing herein contained shall preclude the United States from requiring an additional bond at any time when deemed necessary:

Now, therefore, if the said Principal shall faithfully comply with all of the provisions of the above-identified unit agreement and with the terms of the leases committed thereto, then the above obligation is to be of no effect; otherwise to remain in full force and virtue.

Signed, sealed, and delivered this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the presence of:

\_\_\_\_\_  
(Principal)  
\_\_\_\_\_  
(Surety)

(38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983)

**§ 3286.3 Model designation of successor operator.**

Designation of successor Unit Operator  
State of \_\_\_\_\_, Unit Area, County of \_\_\_\_\_, No. \_\_\_\_\_  
This indenture, dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_, hereinafter designated as "First Party," and the owners of unitized working interest, hereinafter designated as "Second Parties."

Witnesseth: Whereas under the provisions of the Geothermal Steam Act of December 24, 1970, 84 Stat. 1566, the Secretary on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, approved a unit agreement for the \_\_\_\_\_ Unit Area, wherein \_\_\_\_\_ is designated as Unit Operator; and \_\_\_\_\_ has resigned as such Operator; and the designation of a successor Unit Operator is now required pursuant to the terms thereof; and Whereas First Party has been and hereby is designated by Second Parties as a Unit Operator, and said First Party desires to assume all the rights, duties, and obligations of Unit Operator under the said unit agreement.

Now, therefore, in consideration of the promises hereinafter set forth and the promises hereinafter stated, the First Party hereby covenants and agrees to fulfill the duties and assume the obligations of Unit

Where the designation of a successor Unit Operator is required for any reason other than resignation, such reason shall be substituted for the one stated.

**43 CFR Ch. II (10-1-92 Edition)**

Operator under and pursuant to all the terms of the \_\_\_\_\_ unit agreement, and the Second Parties covenant and agree that, effective upon approval of this Indenture by the authorized officer, of the Minerals Management Service, First Party shall be granted the exclusive right and privilege of exercising any and all rights and privileges and Unit Operator, pursuant to the terms and conditions of said unit agreement, said unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

\_\_\_\_\_  
(First Party)  
\_\_\_\_\_  
(Witnesses)  
\_\_\_\_\_  
(Second Party)

I hereby approve the foregoing Indenture designating \_\_\_\_\_ as Unit Operator under the unit agreement for the \_\_\_\_\_ Unit Area, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Authorized Officer,  
Bureau of Land Management.  
(38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983)

**§ 3286.4 Model change of operator by assignment.**

Change in Unit Operator \_\_\_\_\_ unit Area, County of \_\_\_\_\_, State of \_\_\_\_\_, No. \_\_\_\_\_  
This indenture, dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_, hereinafter designated as "First Party," and \_\_\_\_\_, hereinafter designated as "Second Party."

Witnesseth: Whereas under the provisions of the Geothermal Steam Act of December 24, 1970, 84 Stat. 1566, the Secretary on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, approved a unit agreement for the \_\_\_\_\_ Unit Area, wherein the First Party is designated as Unit Operator; and

Whereas the First Party desires to transfer, assign, release, and quitclaim, and the Second Party desires to assume all the

**Bureau of Land Management, Interior**

rights, duties, and obligations of Unit Operator under the unit agreement; and Whereas for sufficient and valuable consideration, the receipt whereof is hereby acknowledged, the First Party has transferred, conveyed and assigned all his/its rights under certain operating agreements involving lands within the area set forth in said unit agreement unto the Second Party;

Now, therefore, in consideration of the promises hereinafter set forth, the First Party does hereby transfer, assign, release, and quitclaim unto Second Party all of First Party's rights, duties and obligations as Unit Operator under said unit agreement; and

Second Party hereby accept this assignment and hereby covenants and agrees to fulfill the duties and assume the obligations of Unit Operator under and pursuant to all the terms of said unit agreement to the full extent set forth in this assignment, effective upon approval of this Indenture by the authorized officer of the Minerals Management Service; said unit agreement being hereby incorporated herein by reference and made a part hereof as fully and effectively as though said unit agreement were expressly set forth in this instrument.

In witness whereof, the parties hereto have executed this instrument as of the date hereinabove set forth.

\_\_\_\_\_  
(First Party)  
\_\_\_\_\_  
(Witnesses)  
\_\_\_\_\_  
(Second Party)

I hereby approve the foregoing Indenture designating \_\_\_\_\_ as Unit Operator under the unit agreement for the \_\_\_\_\_ Unit Area, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Authorized Officer,  
Bureau of Land Management.  
(38 FR 35073, Dec. 21, 1973. Redesignated and amended at 48 FR 44792, 44794, Sept. 30, 1983)

**Group 3400—Coal Management**

Note: The information collection requirements contained in parts 3400, 3410, 3420, 3430, 3450, 3460 and 3470 of Group 3400 have been approved by the Office of Management and Budget under 44 U.S.C. 3607 and assigned clearance number 1004-0073.

The information is being collected to allow the authorized officer to determine if the applicant to lease, for or develop Federal coal is qualified to hold such lease. This information will be used in making those determinations. The obligation to respond is required to obtain a benefit.  
(See 47 FR 33133, July 30, 1982)

**PART 3400—COAL MANAGEMENT: GENERAL**

**Subpart 3400—Introduction: General**

- Sec. 3400.0-3 Authority.
- 3400.0-5 Definitions.
- 3400.1 Multiple development.
- 3400.2 Lands subject to leasing.
- 3400.3 Limitations on authority to lease.
- 3400.3-1 Consent or conditions of surface management agency.
- 3400.3-2 Department of Defense lands.
- 3400.3-3 Department of Agriculture lands.
- 3400.3-4 Trust protection lands.
- 3400.4 Federal/state government cooperation.
- 3400.5 Coal production regions.
- 3400.6 Minimum comment period.

**AUTHORITY:** The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351-359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521-531 *et seq.*), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

Source: 44 FR 42809, July 19, 1979, unless otherwise noted.

**Subpart 3400—Introduction: General**

**§ 3400.0-3 Authority.**

(a) These regulations are issued under the authority of and to implement provisions of:

- (1) The Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.*).
- (2) The Mineral Leasing Act for Acquired Lands of August 7, 1947, as amended (30 U.S.C. 351-359 *et seq.*).
- (3) The Federal Land Policy and Management Act of 1976, October 21, 1976 (43 U.S.C. 1701 *et seq.*).

## APPENDIX D

# Domestic Oil and Gas Lease

This appendix contains the text of a standard form domestic oil and gas industry lease. While this particular example was designed for use in the state of Oklahoma, it represents a fairly conventional domestic lease arrangement. For a legal document, it is relatively short and simple. It is standard enough to exist as a preprinted form with space left open for the specific conditions to be inserted. The main items that differentiate individual leases are the names of the respective parties, the bonus amount, and the legal description of the land. Significantly, a royalty of one-eighth of gross revenues is incorporated in the lease as the standard revenue interest.

The lease contains a number of terms of art familiar to the oil and gas industry. Some of these terms apply to the geothermal industry, others do not. The definitions are as follows, in the order that they appear in the lease:

- ◆ *Distillate*: light, liquid hydrocarbons
- ◆ *Condensate*: liquid produced by cooling a vapor
- ◆ *Casing-head gas*: "natural" gasoline or natural gas condensate
- ◆ *Dry commercial gas*: very-low boiling-point gas that contains no distillate
- ◆ *Dry hole*: a well that fails to yield oil or gas
- ◆ *Rework*: equivalent to a workover; ranges from minor maintenance to major overhaul of an existing well
- ◆ *Casing*: pipe used in a well to keep the walls from collapsing.

OIL AND GAS LEASE

AGREEMENT, Made and entered into this \_\_\_\_ day of \_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ Party of the first part, hereinafter called lessor (whether one or more) and \_\_\_\_\_ part \_\_\_\_ of the second part, hereinafter called lessee.

WITNESSETH, That the said lessor, for and in consideration of \_\_\_\_\_ DOLLARS, cash in hand paid, receipt of which is hereby acknowledged and of the covenants and agreements hereinafter contained on the part of the lessee to be paid, kept and performed, has granted, demised, leased and let and by theses presents does grant, demise, lease and let unto the said lessee, for the sole and only purpose of exploring by geophysical and other methods, mining and operating for oil (including but not limited to distillate and condensate), gas (including casinghead gas and helium and all other constituents), and for laying pipe lines, and building tanks, powers, stations, and structures thereon, to produce, save, and take care of said products, all that certain tract of land, together with any reversionary rights therein, situated in the County of \_\_\_\_\_ State of Oklahoma, described as follows, to-wit:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

of Section \_\_\_\_\_, Township \_\_\_\_\_, Range \_\_\_\_\_, and containing \_\_\_\_\_ acres, more or less.

It is agreed that this lease shall remain in force for a period of \_\_\_\_ years from date (hereinafter called primary term) and as long thereafter as oil or gas, or either of them is produced from said land by the lessee.

In consideration of the premises the said lessee covenants and agrees:

1st. To deliver to the credit of lessor free of cost, in the pipe line to which it may connect its wells, the one-eighth (1/8) part of all oil (including but not limited to condensate and distillate) produced and saved from the leased premises.

2nd. To pay lessor for gas of whatsoever nature or kind (with all its constituents) produced and sold or used off the leased premises, or used in the manufacture of products therefrom, one-eighth (1/8) of the gross proceeds received for the gas sold, used off the premises, or in the manufacture of products therefrom, but in no event more than one-eighth (1/8) of the actual amount received by the lessee, said payments to be made monthly. During any period (whether before or after expiration of the primary term hereof) when gas is not being so sold or used and the well or wells are shut in and there is no current production of oil or operations on said leased premises sufficient to keep this lease in force, lessee shall pay or tender a royalty of One Dollar (\$1.00) per year per net royalty acre retained hereunder, such payment or tender to be made, on or before the anniversary date of this lease next ensuing after the expiration of ninety (90) days from the date such well is shut in and thereafter on the anniversary date of this lease during such period as the well is shut in, to the royalty owners or to the royalty owner's credit in the rental depository bank hereinafter designated. When such payment or tender is made it will be considered that gas is being produced within the meaning of the

entire lease. Lessor shall have the privilege at his risk and expense of using gas from any well, producing gas only, on the leased premises for stoves and inside lights in the principal dwelling thereon out of any surplus gas not needed for operations hereunder.

3rd. To pay lessor for gas produced from any oil well and used off the premises, or for the manufacture of casinghead gasoline or dry commercial gas, one-eighth (1/8) of the gross proceeds, used off the premises, at the mouth of the well, received by lessee for the gas during such time as the gas shall be used, said payments to be made monthly.

If drilling operations or mining operations are not commenced on the leased premises on or before one year from this date, this lease shall then terminate as to both parties unless lessee on or before the expiration of said period shall pay or tender to lessor, or to the credit of lessor in \_\_\_\_\_ bank at \_\_\_\_\_ or any successor bank, the sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), hereinafter called 'rental' which shall extend for twelve months the time within which drilling operations or mining operations may be further deferred for periods of twelve months during the primary term. Payment or tender of rental may be made by check or draft of lessee delivered or mailed to the authorized depository bank of lessor (at address last known to lessee) on or before such date for payment, and the payment or tender shall be deemed made when the check or draft is so delivered or mailed. If said named or successor bank (or any other bank which may, as hereinafter provided have been designated as depository) should fail or liquidate or for any reason refuse to accept rental, lessee shall not be held in default for failure to make such payment or tender of rental until thirty days after lessor shall deliver to lessee a proper recordable instrument naming another bank to receive such payments or tenders. The above named or successor bank or any other bank which may be designated as depository shall be lessor's agent. Drilling operations or mining operations shall be deemed to be commenced when the first material is placed on the leased premises or when the first work, other than surveying or staking the location, is done thereon which is necessary for such operations.

Should the first well drilled on the above described land, or on acreage pooled therewith, be a dry hole, then, and in that event, if a second well is not commenced on said land, or on acreage pooled therewith, within twelve months from the expiration of the last rental period for which rental has been paid, this lease shall then terminate as to both parties, unless the lessee on or before the expiration of said twelve months shall resume the payments of rentals, in the same amount and in the same manner as hereinafter provided. And it is agreed that upon the resumption of the payment of rentals as above provided, that the provisions hereof governing the payment of rentals and the effect thereof shall continue in force just as though there had been no interruption in the rental payments. If the lessee shall commence to drill a well or commence reworking operations on an existing well within the term of this lease or any extension thereof, or on acreage pooled therewith, the lessee shall have the right to drill such well to completion or complete reworking operations with reasonable diligence and dispatch, and if oil or gas, or either of them, be found in paying quantities, this lease shall continue and be in force with like effect as if such well had been completed within the term of years first mentioned.

Lessee is hereby granted the right at any time and from time to time to unitize the leased premises or any portions thereof, as to all strata or any stratum or strata, with any other lands as to all strata or any stratum or strata, for the production primarily of oil or primarily of gas with or without distillate. However, no unit for the production primarily of oil shall embrace more than 40 acres, or for the production primarily of gas with or without distillate more than 640 acres; provided that if any governmental regulation shall prescribe a spacing pattern for the development of the field or allocate a producing allowable based on acreage per well, then any such unit may embrace as much additional acreage as may be so prescribed or as may be used in such allocation of

allowable. Lessee shall file written unit designations in the county in which the leased premises are located. Operations upon and production from the unit shall be treated as if such operations were upon or such production were from the leased premises whether or not the well or wells are located thereon. The entire acreage within a unit shall be treated for all purposes as if it were covered by and included in this lease except that the royalty on production from the unit shall be as below provided, and except that in calculating the amount of any rentals or shut in gas royalties thereon, only that part of the acreage originally leased and then actually embraced by this lease shall be counted. In respect to production from the unit, lessee shall pay lessor, in lieu of other royalties thereon, only such proportion of the royalties stipulated herein as the amount of his acreage placed in the unit, or his royalty interest therein on an acreage basis bears to the total acreage in the unit.

If said lessor owns a less interest in the above described land than the entire and undivided fee simple estate therein, then the royalties and rental herein provided shall be paid to the lessor only in the proportion which his interest basis bears to the total acreage in the unit.

Lessee shall have the right to use, free of cost, gas, oil and water produced on said land for its operations thereon, except water from wells of lessor.

When requested by lessor, lessee shall bury his pipe lines below plow depth.

No well shall be drilled nearer than 200 feet to the house or barn now on said premises, without the written consent of the lessor.

Lessee shall pay for all damages caused by its operations on said land.

Lessee shall have the right at any time to remove all machinery and fixtures placed on said premises, including the right to draw and remove casing.

If the estate of either party hereto is assigned, and the privileges of assigning in whole or in part is expressly allowed, the covenants hereof shall extend to their heirs, executors, administrators, successors, or assigns. However, no change in the division of ownership of the lands, rentals or royalties shall enlarge the obligation or diminish the rights of lessee. No change in the ownership of the land or assignment of rentals or royalties shall be binding on the lessee until after the lessee has been furnished with a written transfer or assignment or a true copy thereof, and it is hereby agreed in the event this lease shall be assigned as to a part or parts of the above described lands and the assignee or assignees of such part or parts shall fail to make default in the payment of the proportionate part of the rentals due from him or them, such default shall not operate to defeat or affect this lease in so far as it covers a part or parts of the lands on which the said lessee or any assignee thereof shall make due payment of said rentals. In case lessee assigns this lease, in whole or in part, lessee shall be relieved of all obligations with respect to the assigned portion or portions arising subsequent to the date of assignment.

All express or implied covenants of this lease shall be subject to all federal and State Laws, Executive Orders, rules and Regulations, and this lease shall not be terminated in whole or in part, nor lessee held liable for damages, for failure to comply therewith, if compliance is prevented by, or such failure is the result of any such Law, Order, Rule or Regulation.

This lease shall be effective as to each lessor on execution hereof as to his or her interest and shall be binding on those signing, notwithstanding some of the lessors above named may not join in the execution hereof. The word 'Lessor' as used in this lease means the party or parties who execute this lease as lessor, although not named above.



Lessee may at any time and from time to time surrender this lease as to any part or parts of the leased premises by delivering or mailing a release thereof to lessor, or by placing a release of record in the proper County. After a partial surrender, the rentals specified above shall be proportionately reduced on an acreage basis.

Lessor hereby warrants and agrees to defend the title to the lands herein described, and agrees that the lessee shall have the right at any time to redeem for lessor by payment any mortgages, taxes, or other liens on the described lands, in the event of default of payment by lessor, and be subrogated to the rights of the holder thereof.

## APPENDIX E

# International Work Agreement

This appendix contains an example of an international work agreement. This particular example is one between the Mobil Oil Corporation, a private oil company, and Petro-Peru, the Peruvian government oil company. The agreement is extremely long and complex, but such long, involved contracts are not atypical of international oil agreements between private companies and governments or government-owned companies. The length and complexity of this document contrast sharply with the domestic oil and gas lease reproduced in Appendix D.

MOBIL/PETROPERU CONTRACT

TO THE NOTARY PUBLIC:

Please enter in your Register of Public Documents the contract entered into by Petroleos del Peru - PETROPERU S.A., hereinafter referred to as "PETROPERU", with Taxpayer Registration Card No. 9914781, domiciled at Paseo de la Republica No. 3361, San Isidro, Lima, duly represented by its Chairman of the Board, Mr. Daniel Nuñez Castillo, appointed by Supreme Resolution No. 056-89-MIPRE of March 17, 1989 on the one part; and, on the other, Mobil Exploration and Producing Peru Inc., Peruvian Branch, hereinafter referred to as the "Contractor", with Taxpayer Registration Card No. 9302991, domiciled at Av. Dos de Mayo 1321, San Isidro, Lima, registered under Fiche No. 71239 of the Book of Companies of the Lima Mercantile Register and in Entry LXXIII, Item I, page 151 of Volume II of the Book of Operations Contractors of the Public Register of Hydrocarbons, duly represented by Mr. John S. Goff, in keeping with the power of attorney registered under Fiche No. 3117 of the Special Powers of Attorney Register of the Lima Public Registers and in Item No. 2, page 427 of Volume Two of the Public Register of Hydrocarbons' Book of Mandates and by its legal representative and National Agent, Dr. Enrique Normand Sparks, in keeping with power of attorney registered under Fiche No. 71239 of the Book of Corporations of the Lima Mercantile Register and in Item No. 1, page 127, Entry XCX, Volume Two of the Public Register of Hydrocarbons' Book of Mandates, and with the participation of Mobil Oil Corporation, a company of New York State, United States of America, domiciled at 3225 Gallows Road, Fairfax, Virginia, United States of America, duly represented by Mr. John S. Goff, in keeping with the power of attorney registered under Fiche No. 3118 of the Special Powers of Attorney Register of

the Lima Public Registers, with the participation, on behalf of the Supreme Government, of the Vice Minister of Finance of the Ministry of Economy and Finance, Mr. Arturo Alba Bravo, appointed by Supreme Resolution No. 057-89-EF/43.40 of May 17, 1989 authorized by Supreme Decree No. 012-89-EM/VME of September 14, 1989; and with the participation of the Central Reserve Bank of Peru, duly represented by Messrs. Santiago Antunez de Mayolo Morelli and Pedro Murillo de Martini, authorized in keeping with Board of Directors' decisions of 05 and 08 September, 1989 under the terms and conditions appearing in the following clauses:

#### PRELIMINARY CLAUSE - GENERALITIES

- I. The present document attests to the three (3) Operations Contracts to explore for, and to exploit Hydrocarbons, to be implemented in Blocks 28, 29 and 30, whose descriptions and locations are shown in Annexes "A" and "B" to the present Contract. Due to existing geological similarities and geographical continuity, the Parties agree to stipulate the terms and conditions for the three (3) Contracts in this single document. In implementing Operations all three (3) blocks are merged into one single Contract Area. Furthermore, it is hereby stipulated that the terms and conditions agreed upon in the present document shall be applicable, and made extensive to block 53, whose description and location also appear in Annexes "A" and "B" if, in keeping with the law, a new contract is entered into with the Contractor assigning him said block.

- II. PETROPERU is the Contract Area's holder of record. "In situ" hydrocarbons belong to the State. Those extracted belong to PETROPERU.
- III. Except for what is stipulated in clause eight, and in keeping with its other clauses, the present Contract does not grant any rights to the Contractor over the Contract Area nor over the Hydrocarbons.
- IV. The definitions which the Parties have agreed upon in clause one of the present Contract are aimed at giving the concepts used in this Contract their required meaning. Said meaning shall be the only one accepted for purposes of interpreting the Contract's implementation, unless the parties expressly agree to the contrary in writing.
- V. For everything having to do with, and deriving from, the present Contract, the Parties agree that the titles of the Clauses are irrelevant to interpreting the Clauses' content.
- VI. The annexes to the Contract signed by both Parties are an integral part of it, consequently, any reference to the Contract includes the annexes. In case of disagreement, what is stipulated in the Contract shall prevail.

#### CLAUSE ONE - DEFINITIONS

All the definitions included in the present clause shall have the same meaning, whether the terms are used in the singular or in the plural.

1.1 Affiliate

Any entity, in which any of the Parties directly or indirectly holds over fifty percent (50%) of the voting stock; or any entity or individual who, directly or indirectly, owns more than fifty percent (50%) of the shares of voting stock of one of the Parties; or any entity in which over fifty percent (50%) of its shares of voting stock are owned, directly or indirectly, by the same stockholder or stockholders who directly or indirectly own more than fifty percent (50%) of the shares of voting stock of any of the Parties to the present Contract.

1.2 Year

A period of twelve (12) consecutive Months in keeping with the Gregorian Calendar, counted from a specific date.

1.3 Contract Area

Initially it is the area described in annex "A" and which is shown in annex "B", within which the Contractor shall implement the present Contract, defined as blocks 28, 29 and 30, each with an area of one million (1,000,000) hectares, merged together for purposes of implementing Operations. The Contract Area may also include the one defined as block 53, with an area of six hundred and fifty thousand fifty seven and eight tenths (650,057.80) hectares, described in annex "A", and which is shown in annex "B", if a new contract regarding this block is signed with the Contractor, in keeping with the stipulations

in the preliminary clause and in paragraph 2.2. In the future the Contract Area shall be the one resulting after excluding the areas which, from time to time, might be released by the Contractor in keeping with the terms of the Contract.

Should there be any discrepancy between what is shown in annex "B" and the description contained in annex "A", said annex "A" shall prevail.

1.4      Barrel

Forty-two (42) gallons U.S.A. Liquid Measure of Oil (free of water, mud or other sediments) corrected to sixty degrees Fahrenheit (60° F) at sea level pressure.

1.5      Supervisory Committee

This is the body which oversees compliance with, and implementation of this Contract. Its powers are set out in clause seven of the present Contract.

1.6      Condensate

This is the liquid formed by the condensation of a vapor or gas, specifically the Hydrocarbons separated from Natural Gas due to pressure and temperature changes when the reservoir's Natural Gas is released in the separators on the surface. Such Condensate remains liquid at atmospheric pressure and temperature.



1.7 Contractor

Mobil Exploration and Producing Peru Inc., Peruvian Branch, which has been rated as legally, technically and economically apt by the General Hydrocarbons Bureau and is registered in the Public Register of Hydrocarbons as Item I, Entry LXXIII, of page 151, of Volume II of the Book of Operations Contractors.

1.8 Contract

It is the present agreement which the Parties have arrived at to stipulate the terms and conditions of the three (3) Operations Contracts corresponding to blocks 28, 29 and 30, which are contained in this document and in the annexes herein.

It could also include the new contract which might be entered into, in keeping with the law, to assign block 53 to the Contractor.

1.9 Derivatives

These are the liquid products resulting from Hydrocarbons refining.

1.10 Development

The drilling, deepening, reconditioning and completion of wells, as well as the design, construction and installation of equipment, piping, storage tanks and other means and installations and the implementation of any other activity necessary to produce Hydrocarbons.

This includes building the Storage and Transportation System and the Main Pipeline.

1.11 Commercial Discovery

The discovery of Hydrocarbons within the period established in item 3.2 which, in the Contractor's opinion, justifies implementing the Development as stipulated in items 4.17 and 4.18.

1.12 Day

A calendar day, unless otherwise specified in the present Contract. Hence, it involves a period of twenty four (24) hours which starts at zero (00:00) hours and ends at twenty four hundred (24:00) hours.

1.13 Business Day

All working Days from Monday to Friday, inclusive, except for those Days declared non-working or partially non-working, in the city of Lima, by competent authority.

1.14 Dollar

The dollar, U.S. legal tender.

1.15 Main Pipeline

This is a major pipeline which, starting from the Contract Area, takes the Hydrocarbons produced there to a Production Fiscalization Point. It includes metering points connected to the pipeline; storage areas; piping; pumping or compressor stations; communications systems; access

and maintenance roads as well as any other installation which might be needed or required for the permanent and timely transport of Hydrocarbons. This also involves the design, construction, maintenance and equipment for all of the above.

1.16 Exploration

The planning, implementation and evaluation of all types of geological, geophysical, geochemical and other studies; the drilling of the Exploration and stratigraphic Wells necessary to discover Hydrocarbons. This may include the drilling of Confirmation Wells to evaluate the Discovery Field.

1.17 Starting Date for Commercial Production

The date of the first delivery of Hydrocarbons at the Production Fiscalization Point for which the Contractor's fee must be paid. All of those deliveries made for testing or other purposes specifically agreed upon by the Parties shall not be considered as regular deliveries for purposes of this definition.

1.18 Date of Signing

The date upon which the Parties sign the present Contract.

1.19 Effective Date of the Contract

The date upon which the Contractor reports the fact referred to in item 4.1 to PETROPERU, and as of which the term of the Contract shall

start to run. This date may not be more than one hundred and eighty (180) Days after the Date of Signing.

1.20 Fiscalization Verification

Actions implemented by the General Hydrocarbons Bureau to verify the Contractor's Operations during the Term of the Contract.

1.21 Natural Gas

Those Hydrocarbons which under atmospheric temperature and pressure conditions are found in the gaseous state.

1.22 Associated Natural Gas

Natural Gas produced with Oil.

1.23 Non-Associated Natural Gas

Gas occurring in a natural Reservoir with no Oil being present.

1.24 Hydrocarbons

Any organic compound, whether liquid, solid or gas, made up mainly of carbon and hydrogen.

1.25 Fiscalized Hydrocarbons

These are the Contract Area's Hydrocarbons, measured and delivered at a Production Fiscalization Point.

1.26 Liquid Hydrocarbons

Oil, Condensate and Heavy Oil.

1.27 Fiscalized Liquid Hydrocarbons

All the Liquid Hydrocarbons which are produced in the Contract Area, and delivered and metered at a Production Fiscalization Point.

1.28 Month

A period which runs as of any given Day in a calendar month which ends on the Day before that same Day of the following calendar month.

1.29 Operations

All activities related to Exploration, Development, Production, the Transportation and Storage and Main Pipeline System.

1.30 Parties

PETROPERU and Mobil Exploration and Producing Peru Inc., Sucursal Peruana (Peruvian Branch).

1.31 PETROPERU

Petroleos del Peru - PETROPERU S.A.

1.32 Oil

Those Hydrocarbons found in a liquid state under Reservoir pressure and temperature conditions.

1.33 Heavy Oil

These are the Hydrocarbons discovered underground which to be exploited, and because of their density and viscosity, require the use of non-conventional methods such as Petroleum mining, in-situ combustion, steam injection, mixing with Condensate or other enhanced recovery methods, excluding blending it with Oil produced in the Contract Area or in some other adjacent area.

1.34 Confirmation Well

A well drilled to evaluate a Hydrocarbons Field discovered by an Exploration Well.

1.35 Development Well

A well drilled to exploit a Hydrocarbons accumulation.

1.36 Exploration Well

A well drilled for purposes of discovering a new Field, a potential Reservoir deeper than the ones already discovered, or to determine some area's stratigraphy.

1.37 Accounting Procedure

The document appearing in annex "E".

1.38 Production

Any type of activity from the Starting Date of Commercial Extraction in the Contract Area, and which includes the operation of wells.

equipment, piping, Main Pipeline, Transportation and Storage System, Hydrocarbons treatment and measuring and any type of primary, secondary or tertiary recovery methods such as recycling, recompression, pressure maintenance and liquid or gas injection.

1.39 Production Fiscalization Point

The place in which the Contractor shall deliver to PETROPERU the Hydrocarbons from the Contract Area. To this end, the place shall have the appropriate equipment and installations which shall serve for volumetric measurements and determinations, adjustments for temperature, water and sediment contents, and other measurements, so as to determine the volume in number of Barrels or in standard cubic feet.

For the Liquid Hydrocarbons the Production Fiscalization Point shall be located at that station of the North Peruvian Pipeline to which the Main Pipeline connects or, should the Main Pipeline reach the Peruvian coast, at its final flange before storage and loading installations.

The Liquid Hydrocarbons Production Fiscalization Point may be set up at any other place which the Parties may agree upon duly in advance of the term for delivery of the "Initial Development and Main Pipeline Plan".

The location of the Natural Gas Production Fiscalization Point must be agreed upon by the Parties within the aforementioned time frame.



1.40 Reservoir

An underground stratum or strata which are part of the same Field, which are producing or which have been proven as capable of producing Hydrocarbons, and which have a common pressure system throughout their whole area.

1.41 Transportation and Storage System

The set of piping, pumping stations, compressor stations, storage tanks, river installations should they be necessary, delivery systems, roads, other installations and any other necessary and useful means to transport the Hydrocarbons produced in the Contract Area up to the Main Pipeline's entrance point, including the design, construction, maintenance and equipping of all the above.

The Transportation and Storage System includes all the installations which the Contractor may build for his exclusive use beyond the Production Fiscalization Point for transportation, storage and loading up to the F.O.B. point, Peruvian export port, including the design, construction, maintenance and equipping of all the above.

1.42 Subcontractor

Any individual or corporation domiciled in Peru or abroad, hired by the Contractor to provide services related to the present Contract.

1.43 Supervision

The actions which PETROPERU carries out to confirm the Contractor's compliance with his obligations during the Term of the Contract.

1.44 Taxes

Includes taxes, contributions, rates, excise taxes, tolls, municipal taxes, imposts, duties and other national, regional, municipal or local assessments or levies, whatever their name or whatever ultimate use they may have.

1.45 Sales to Third Parties

Export sales of Hydrocarbons produced in the Contract Area in which the following conditions are met:

- a) That the contract price be the only consideration for the sale;
- b) That the terms of sale not be affected by any commercial relationship whatsoever, other than that established by the sales contract itself, between the seller and buyer or any of their respective Affiliates;
- c) That neither the seller nor any of its Affiliates, directly or indirectly, have any interest in the subsequent resale or disposal of the Hydrocarbons, or of any one of them; and,

- d) That it does not involve processing, barter or countertrade agreements.

1.46 Term of the Contract

Period included between the Effective Date of the Contract and the end of the pertinent term stipulated in item 3.1.

1.47 Field

A surface area under which there are one or more Reservoirs which are producing or which have been proven as being capable of producing one class of the following classes of Hydrocarbons: Oil, Condensate, Heavy Oil or Natural Gas. Reservoirs producing different classes of said Hydrocarbons shall constitute different Fields, even when one or more of said Reservoirs are under the same surface area. The surface area constituting a Field shall be described in the respective "Initial Development and Main Pipeline Plan" or, as may be the case, in the first annual work program and budget which contemplates Development of the respective Field.

CLAUSE TWO - OBJECT OF THE CONTRACT

- 2.1 By the present document PETROPERU hires the Contractor exclusively to carry out the Operations, in keeping with what is established in Decree Law Nos. 22774, 22775, 22862 and Law No. 24782, the pertinent legislation and the stipulations mutually agreed upon by both Parties in this Contract, for the common purpose of discovering and producing Hydrocarbons in the Contract Area.

2.2 As indicated in the preliminary clause's item I, the Contract includes the three (3) Operations Contracts entered into as regards blocks 28, 29 and 30, grouped together to implement the Operations. The Parties recognize that the Contractor is to carry out the Operations in an area which has not been previously explored and which, due to its characteristics, constitutes a geological and geographical unit known as the "Huallaga Basin", whose area exceeds that of the three (3) aforementioned blocks. In view of this exceptional circumstance, and given the advantages of carrying out an integrated Exploration program in said basin it is hereby agreed that, in keeping with the law, a new contract may be entered into with the Contractor assigning him block 53. Said contract may be entered into at any time provided the Contractor has concluded the aeromagnetic surveys and started the seismic line surveys stipulated in sub-item 4.7.1 and is fully complying with his contract obligations then in force. To this end, at the Contractor's request, PETROPERU shall produce a report as to whether the Contractor is complying with his obligations. Should the report be positive, PETROPERU shall submit it to the General Hydrocarbons Bureau which, if in agreement that the Contractor is complying with his obligations, shall approve it.

After this approval, and with no further paperwork, the new Contract shall be automatically considered as approved by the Supreme Decree which approved the three (3) aforementioned Operations Contracts. The new Contract shall extend the present Contract's terms and conditions to cover block 53, which shall thus be included when Operations are

implemented and shall conform itself to the terms of the exploration and exploitation phases contemplated in the present Contract.

- 2.3 The Contractor shall perform all the Operations established in the present document in keeping with the terms stipulated in it and shall implement them, directly or through Subcontractors, during the Term of the Contract. PETROPERU shall supervise Operations while the General Hydrocarbons Bureau shall Fiscalize them.

PETROPERU's and the General Hydrocarbons Bureau's representatives may perform their duties at any time. They must identify themselves and be expressly authorized for that job, in writing, by PETROPERU and the General Hydrocarbons Bureau, respectively. The Contractor shall provide all the facilities required, in the field and in the city, so that said representatives may do their job. All other costs and expenses corresponding to said representatives shall be for PETROPERU's and the General Hydrocarbons Bureau's accounts, respectively. The appointed supervisors and "fiscalizers" (controllers) shall perform their duties in keeping with the Contract's objective, which is that of implementing operations for the common purpose of finding and producing Hydrocarbons. Consequently, they shall discharge their duties supporting and facilitating the Contractor's work, in keeping with the terms of the Contract.

- 2.4 The Contractor shall supply all the technical, financial and economic resources required for the Operations stipulated in the Contract.

Except for those for which the law or the Contract specifically stipulate the opposite, all costs and disbursements incurred for this purpose shall be the Contractor's exclusive responsibility and charge. Furthermore, the Contractor is the one technically, financially and economically responsible for Operations during the Term of the Contract.

Neither the Peruvian State nor PETROPERU shall bear any risk whatsoever for said Operations, except for those which might accrue to PETROPERU in keeping with clause twenty-three of the Contract.

2.5 All Hydrocarbons produced in the Contract Area are PETROPERU's property from the moment they are extracted. The Contractor shall produce said Hydrocarbons and shall have the right to receive a payment in kind, which shall be paid in Hydrocarbons of the same class and quality as the Hydrocarbons delivered at a Production Fiscalization Point in accord with what is established in clause eight.

2.6 In exercising the rights vested in PETROPERU by item 5.5 of the Bases approved by Decree Law No. 22774, to enter into a partnership contract with the Contractor, and in item 6.10 of said Bases, to obtain a participation in the Main Pipeline, the Parties have already decided that any operation to be eventually implemented to this regard, will be implemented exclusively in the manner contemplated in clause twenty three of this Contract.

CLAUSE THREE - TERM, CONDITIONS AND GUARANTIES

- 3.1 The term for the Hydrocarbons exploration phase is six (6) Years; or seven (7) Years should the stipulations of sub-item 3.2.3 apply; running from the Effective Date of the Contract, except if in accord with what is established elsewhere in the Contract, the term is shortened.

The term for the Hydrocarbons exploitation phase, except for Non-Associated Natural Gas, is the time remaining from the end of the exploration phase until expiry of the thirty (30) Years' term from the Effective Date of the Contract unless, in accord with other Contract stipulations, this term is changed.

The term of the Contract for exploitation of the Non-Associated Natural Gas may be for a longer period of time because, in accord with the Law, the Non-Associated Natural Gas exploitation phase may last for up to forty (40) Years, running from the end of the exploration phase. Before starting to Develop the production of Non-Associated Natural Gas, the Parties shall agree to the term for its exploitation taking into account the criteria stipulated by the law but without exceeding said maximum term.

- 3.2 The exploration phase is divided into two periods:

- 3.2.1 A basic period, to last four (4) Years, divided into two (2) stages:

3.2.1.1 first stage, of two (2) Years.

3.2.1.2 second stage, of two (2) Years.

3.2.2 Extension period, of two (2) Years' duration.

3.2.3 No less than ninety (90) Days before expiry of the term established in sub-item 3.2.2, the Contractor may request an additional one-time extension of the exploration phase for up to one (1) Year. Such extension shall run from the expiry of the term stipulated in the sub-item above.

This extension must be with guaranteed work. To this end the Contractor shall submit to PETROPERU the technical reasons which support his request and PETROPERU shall see to it that the corresponding Supreme Resolution is enacted.

3.3 The Contractor may initiate the basic period's second stage as well as the extension period, respectively dealt with by sub-items 3.2.1.2 and 3.2.2, provided he so desires and has so notified PETROPERU in keeping with item 4.9, except if he has not complied with the previous stage's obligations, in which case sub-item 24.3.2 shall apply with the corresponding execution of the bank bond for the pending balance or the corresponding payment for the value of that part of the work which has not been implemented.



3.4 If during the basic period's, or the extended period's stages, the extension referred to in sub-item 3.2.3 having already been granted, the Contractor, due to technical reasons duly proven and approved by PETROPERU, were to be prevented from completing the respective minimum guaranteed work programs described in sub-items 4.7.1, 4.7.2 and 4.7.3, he will have the right to extend the pertinent stage for a maximum of six (6) Months. These extensions shall in no case result in an extension of the exploration phase's total term.

3.5 Each and every one of the guaranteed Exploration work programs shall be considered as minimum and must be guaranteed by the Contractor's granting a joint and several, unconditional, irrevocable and immediately collectible bank guaranty in Peru, issued by a bank established in Peru.

The first bank guaranty corresponding to the work program referred to in sub-item 4.7.1 shall be delivered to PETROPERU within the thirty (30) Days following the Date of Signing of the Contract.

The guaranties for the work programs specified in sub-items 4.7.2, 4.7.3 and 4.7.4, shall be delivered to PETROPERU before the start of the aforementioned stage or extension periods.

The guaranties for the exploration phase stages or periods shall remain in force for a term which exceeds the stipulated period for compliance with each work program by twenty (20) Business Days.

Should the bank guaranties which the Contractor must deliver in keeping with this paragraph's terms not remain in force for the stipulated periods of time, PETROPERU shall report this fact to the Contractor who must then deliver a new bank guaranty, or extend the existing one, within a period of fifteen (15) Business Days following the Contractor's receiving such notice from PETROPERU advising him of this fact. If not, sub-item 24.3.1 shall apply.

The bank guaranty shall be issued for each minimum guaranteed work program, in the pertinent form described in annexes "C-1" through "C-4". Each of these guaranties shall include a reduction plan so that they may be periodically reduced to the extent that the respective work program progresses.

The aforementioned reductions may only be made for the amount approved by PETROPERU. This approval shall be given, clearly and in writing, within fifteen (15) Business Days after receiving the Contractor's request therefor.

The amount of the bank guaranty to cover the minimum work program of the basic period's (4.7.1) first stage shall be U.S. \$29,200,000 (twenty-nine million two hundred thousand Dollars), in conformance with annex "C-1".

The amount of the bank guaranty to cover the minimum work program of the basic period's (4.7.2) second stage shall be U.S. \$36,000,000 (thirty six million Dollars), in conformance with annex "C-2".

The amount of the bank guaranty to cover the minimum work program of the extension period (4.7.3) shall be U.S. \$31,400,000 (thirty-one million four hundred thousand Dollars), in conformance with annex "C-3".

The amount of the bank guaranty to cover the additional extension period's work program referred to in sub-item 3.2.3 shall be U.S. \$10,900,000 (ten million nine hundred thousand Dollars), in conformance with annex "C-4".

- 3.6 The initial amount of the guaranties referred to in the previous paragraph shall be reduced upon applying the provisions of item 4.10.
- 3.7 Mobil Oil Corporation participates for purposes of giving the guaranty appearing in annex "D".
- 3.8 In keeping with item 5.1, the exploitation phase shall start immediately after the expiry of the exploration phase's stipulated term.

CLAUSE FOUR - EXPLORATION

- 4.1 The Contractor binds himself to start Exploration work in the Contract Area within the period of time stipulated in item 1.19. If not he shall lose all his rights over the Contract Area and sub-item 24.3.4 shall apply.

Exploration shall be understood as started on the date in which the first seismic shot is recorded. Within the aforementioned term the Contractor may also start placing the orders for necessary materials and equipment and performing other activities of the minimum guaranteed work program described in item 4.7, or required to implement it.

- 4.2 The Contractor, by written notice given to PETROPERU no less than thirty (30) days in advance, and provided he has fully complied with the minimum guaranteed work program for each of the basic period's stages or of the exploration phase extension periods, as may be the case, may release the whole of the Contract Area without any fine or penalty whatsoever. Should the Contractor release the whole of the Contract area, or abandon it before completing the corresponding work program referred to in the present Clause, the Contractor shall pay the amount corresponding to those portions of the work which have not been implemented, or PETROPERU may execute the pertinent guaranty for the amount corresponding to that part of the guaranteed work which has not been carried out; this without detriment to PETROPERU's applying the stipulations of sub-item 24.3.4.

At any time the Contractor may release parts of the Contract area by means of written notices sent to PETROPERU no less than thirty (30) Days in advance, without any fine or penalty whatsoever, but without this affecting or reducing his obligation to comply with the minimum guaranteed program for the stage or period then under way.

- 4.3 At the end of the exploration phase the Contractor shall release fifty percent (50%) of each of the blocks in the Contract Area in which a declaration of Commercial Discovery has been made. This percentage shall include any previously made releases.

If no declaration of Commercial Discovery has been made in a block by the end of the exploration phase, the Contractor's rights and duties with regard to that block shall terminate.

The Parties shall keep a record of the areas which the Contractor may release in the minutes of the meetings of the Supervisory Committee.

- 4.4 For the purposes dealt with in items 4.2, 4.3 and paragraph two of item 5.13, each of the blocks referred to in the present Contract has been divided, to the extent possible, into rectangular parcels of twenty thousand (20,000) hectares or, where this was not possible, in parcels of a smaller area. These parcels' description is given in annex "A" and they are shown in annex "B".

As stipulated in the preliminary clause's item I annexes "A" and "B" to this Contract include a description and a map for block 53 which, as has been stated, may be included in the original Contract Area.

Upon relinquishment in each block the Contractor shall have the right to select a sufficient number of parcels he wants to keep, the sum of the areas of which amount to fifty percent (50%) of the area of each of the Contract Area's original blocks where a declaration of Commercial Strike has been made. However, the parcels selected in a block cannot form more than six (6) separate areas and each of said parcels within each such area shall be tied to another by their sides or corners, except for the case stipulated in item 5.13.

- 4.5 Any Hydrocarbons Field found within the area which the Contractor has released shall revert to PETROPERU at no cost to it.

Any investment made or expense incurred by the Contractor in the areas he has released, including those made in the Field which revert to PETROPERU, shall be included or maintained for calculating the "R" factor referred to in clause eight.

- 4.6 The Contractor binds himself to drill and complete one (1) additional Exploration Well for each of those Exploration Wells he is committed to drill in accord with item 4.7 and which results in a discovery that gives rise to the notice referred to in items 4.17 or 4.18. This would be done in a drillable structure other than the one in which the

aforementioned discovery well was drilled, provided such drillable structure exists in the Contract Area. Such drilling would be carried out for the objectives which would be mutually agreed upon by the Parties.

The additional Exploration Wells must be drilled and completed in the exploration phase. Should this not be possible the Contractor must drill and complete the additional Exploration Wells during the two (2) Years following the start of the exploitation phase.

4.7 The minimum guaranteed work program for the exploration phase is for the whole Contract Area, and involves the following:

4.7.1 Basic period - first stage. This first stage has a two (2) Year term, running from the Effective Date of the Contract. In this first stage the Contractor is committed to perform the following:

- a) Running 13,000 Km. (thirteen thousand kilometers) of aeromagnetic lines and interpreting their results.
- b) Recording at 1,600 (sixteen hundred) gravimetric stations and interpreting their results.
- c) Running 1,600 Km. (sixteen hundred kilometers) of seismic lines and interpreting their results.

- d) Performing the geological, geophysical and geochemical studies of the Contract Area which might be necessary to choose the proper places where the Exploration Wells should be drilled.
- e) Drilling and completing one (1) Exploration Well.

4.7.2 Basic period - second stage. This second stage has a two (2) Year term, which shall start on the Day following expiry of the first stage period, in keeping with item 3.3. During this second stage the Contractor is committed to perform the following:

- a) Running 1,300 Km. (thirteen hundred kilometers) of seismic lines and interpreting their results.
- b) Drilling and completing two (2) Exploration Wells.
- c) Performing geological and geophysical studies of the Contract Area.

4.7.3 The extension period shall have a two (2) Year term running from the day following expiry of the basic period's second stage's term, in accord with item 3.3. During this period the Contractor is committed to perform the following:



- a) Running 700 Km. (seven hundred kilometers) of seismic lines and interpreting their results.
- b) Drilling and completing two (2) Exploration Wells.

4.7.4 The additional extension period referred to in sub-item 3.2.3 shall have a one (1) Year term, running from the date following expiry of the extension period referred to in sub-item 4.7.3.

During this additional extension period the Contractor shall be committed to drilling and completing one (1) Exploration Well.

The Contractor binds himself that by the end of the exploration phase a minimum of 300 Km. (three hundred kilometers) of seismic lines with their corresponding interpretation of the results shall have been run, provided this is justified by the interpretation of the aeromagnetometric survey of the Contract Area.

4.8 The Exploration Wells referred to in clause four must reach a depth sufficient to guaranty the evaluation of the objectives (Cretaceous, Jurassic-Triassic and Paleozoic or a depth of 5,000 (five thousand) meters, whichever comes first) or such other depth as the Parties agree upon as a result of geological and geophysical studies.

Furthermore, the obligation of drilling an Exploration Well can be taken as satisfied if the Contractor so requests it during the drilling but due only to mechanical or geological problems.

- 4.9 To be able to go on to the basic period's second stage or to the extension period specified in sub-items 3.2.1.2 and 3.2.2, respectively, the Contractor shall notify PETROPERU of his desire to continue implementing the Contract, no less than thirty (30) Days in advance of the date of expiry of the pertinent stage's, or extension period's, term in which the Contractor shall exercise the aforementioned right.

Should the Contractor not notify PETROPERU in this regard, it shall be deemed that Contractor does not wish to go on to said stage or to such extension and sub-item 24.3.4 shall apply, except in the case in which the exploitation phase has started.

- 4.10 Any extra work which the Contractor might carry out under sub-items 4.7.1, 4.7.2 and 4.7.3, in excess of what is required for each of the respective stages or extension periods shall be applied to reducing the obligation assumed with respect to that same kind of work in the following stages or extension periods.

In this case, the initial amount of the bank guaranty which was to be given for the next stage or extension period shall be reduced by an

amount equivalent to value of that portion of such excess work which has already been effectively concluded and implemented.

- 4.11 In case that for technical reasons during the exploration phase the Parties agree that it would be unreasonable to drill any Exploration Well the Contractor, at PETROPERU's request, shall apply the guaranteed amount of the programmed investment to any undrilled Exploration Well, to seismic or other additional Exploration work which might be agreed upon with PETROPERU in the Contract Area. After its completion the Contractor's original obligation shall be deemed satisfied.
- 4.12 Without detriment to the stipulations of item 4.2, should the Contractor fail to comply with the minimum work program in the time stipulated in item 4.7, without there being any technical reasons approved by PETROPERU, the Contractor shall pay the amount corresponding to the value of that part of the unperformed work or the bank guaranty shall be executed. In both cases sub-item 24.3.4 would apply.
- 4.13 Within the ninety (90) Days following the terms established in sub-items 4.7.1, 4.7.2, 4.7.3 and 4.7.4, the Contractor must present a report evaluating the geological, geophysical and geochemical analyses carried out during said periods of time in connection with the work programs in the aforementioned sub-items, and deliver any related samples to PETROPERU.

Furthermore, within the ninety (90) Days following the completion or abandonment of an Exploration Well or a Confirmation Well, the Contractor must submit a geological evaluation, operations and cost report on such a well.

- 4.14 PETROPERU may request, and the Contractor shall carry out, additional work on any well or wells drilled in the area released by the Contractor provided that, in the Contractor's judgement, it is technically feasible with available equipment and does not affect the Contractor's work programs.

Said additional work shall be carried out at PETROPERU's cost and risk.

- 4.15 When the Contractor first discovers Hydrocarbons in a block believes it could lead to a Commercial Discovery, except as provided in item 4.18, he shall proceed in the following manner:

- a) Having completed a Discovery Well which he believes has economic potential, he shall notify PETROPERU and the General Hydrocarbons Bureau, within a term of no more than sixty (60) Days after said completion, reporting that such Discovery has taken place.
- b) During the one hundred and eighty (180) Days following such notice such finding will have to be corroborated by drilling two

(2) Confirmation Wells. This term could be increased by up to one hundred and eighty (180) additional Days in case the Contractor feels that more Confirmation Wells have to be drilled.

c) As soon as possible, and within the two hundred and seventy (270) Days following the conclusion of the work mentioned in item b), submit the following to PETROPERU and to the General Hydrocarbons Bureau:

1) An "Initial Development and Main Pipeline Plan" to implement the Development and Production, of the Hydrocarbons' discovery listing:

- The physical and chemical characteristics of the Hydrocarbons discovered and the percentages of associated products and impurities which they might contain.
- For the Non-Associated Natural Gas, the lead time for its exploitation.
- Estimated production profiles for the Field or Fields during the Contract Term.
- The estimated number of wells and their productive capacity.
- Transportation and Storage System in the Contract Area and at the export terminal.

- Main Pipeline.
  - Required technical equipment including a technical appraisal and evaluation.
  - Basic safety principles and the terms of reference of the environmental impact study applicable to Development and Production.
  - Tentative time schedule for all the works to be implemented.
  - Estimated Starting Date for Commercial Production.
- 2) The proposed plan must include specific estimated costs for the discovery's Development and Production taking into account, as indicated, the discovery's location, its depth, as well as any other information which, in the Contractor's opinion, will help make an economic evaluation of the discovery, except estimates of Hydrocarbon prices.
- 3) If the Contractor foresees that the "Initial Development and Main Pipeline Plan" will contemplate using the North Peruvian Pipeline or any other pipeline owned by PETROPERU, he shall provide PETROPERU with an estimate of the volumes to be pumped by said pipelines so that, in its turn and as soon as possible, PETROPERU may supply a preliminary estimate of the transportation fees it intends to charge, to thus aid in better preparation of said plan.

4.16 Within sixty (60) Days after having received the "Initial Development and Main Pipeline Plan" referred to in the previous paragraph's item c), and after any observations made by PETROPERU have been resolved, PETROPERU must advise the Contractor:

4.16.1 a) If it approves the "Initial Development and Main Pipeline Plan" or,

b) If it has decided to exercise its right to participate in the Development and Production in accord with the provisions of items 23.2 and 23.4.

4.16.2 If it has decided to make use of its right to participate in the Main Pipeline in accord with the provisions of items 23.1 and 23.4.

4.16.3 Should the "Initial Development and Main Pipeline Plan" contemplate using the North Peruvian Pipeline or any other pipeline owned by PETROPERU, PETROPERU shall include the tariffs for transportation and for storage and loading facilities, attaching them to the draft "Transportation Contract" it proposes.

4.17 Should the Contractor decide to make a declaration of Commercial Discovery, it must proceed to notify PETROPERU and the General Hydrocarbons Bureau within the appropriate deadline:

- a) In case PETROPERU's notice, referred to in sub-item 4.16.1.a), limits itself to approving the aforementioned plan; within the five (5) Business Days following the date said notice was received.
- b) In case the notice referred to in sub-item 4.16.1.a) contains an approval which contemplates the use of the North Peruvian Pipeline or any other pipeline owned by PETROPERU, as provided in sub-item 4.16.3; simultaneously with formalizing the "Transportation Contract". To this end the Parties shall have a term of sixty (60) Days following the date of reception of PETROPERU's notice with the information stated in the aforementioned sub-item 4.16.3; or,
- c) In those cases in which the notice contemplates exercising the rights provided in sub-item 4.16.1.b) or in sub-item 4.16.2; simultaneously with formalizing the "Association Agreement" referred to in item 23.4.

Should such agreement not be formalized the Contractor shall be obliged to go ahead and make the declaration of Commercial Discovery in the terms of the "Initial Development and Main Pipeline Plan", referred to in item 4.16, at the end of the term stipulated in said item 23.4.



In any case the declaration of Commercial Discovery for each of the blocks must be made before the end of the exploration phase.

- 4.18 The Contractor may choose to proceed directly to make a declaration of Commercial Discovery at any time during the exploration phase's term; even if the procedure established in items 4.15, 4.16 and 4.17 has started.

After said declaration has been made, and if he has not done so before, the Contractor must present the "Initial Development and Main Pipeline Plan" within the term provided in point c) of item 4.15, or in whatever time is left if the term has started to run.

In these cases the procedure and the terms stipulated in item 4.16, as well as the procedure and terms stipulated in sub-items 4.17b) and 4.17c), shall be followed.

- 4.19 Should the Contractor make a declaration of Commercial Discovery in accord with item 4.17's provisions, he shall be obliged to start the Development of the pertinent block within the one hundred and eighty (180) Days following the declaration of Commercial Discovery.

Should the procedure provided in item 4.18 have been followed, the Contractor shall be obliged to start the Development of the pertinent block within the aforementioned term of one hundred and eight, (180) Days, to run from receipt of the notice referred to in sub-item 4.17a)

or from completion of the procedures and terms mentioned in sub-items 4.17b) or 4.17c).

- 4.20 Only one declaration of Commercial Discovery must be made for each of the blocks. Discoveries in the same block, subsequent to the first one, shall not require a declaration of Commercial Discovery and their Development, including the building of a Main Pipeline should it be necessary, shall be carried out in keeping with the work programs and budgets submitted by the Contractor and approved by PETROPERU as provided in item 5.4.

The declaration of Commercial Discovery, when appropriate in accord with the previous paragraph, must be made following either the procedure provided in items 4.15, 4.16 and 4.17; or in item 4.18. In every case each pertinent procedure's terms shall have to be met. They shall run independently of those of other procedures under way.

The Parties, recognizing that they both desire to optimize the Operations to be carried out under the Contract agree that, whenever it is appropriate and necessary, it will be possible to adjust, extend or change the terms of the aforementioned procedures, for the "Initial Development and Main Pipeline Plans", or of the annual work programs, as may be the case, so as to coordinate, harmonize or integrate the Development of two (2) or more oil discoveries in the Contract Area. To this end the Contractor shall submit the necessary proposals to

PETROPERU so that such adjustments, extensions or changes may be agreed upon.

- 4.21 The Contractor shall not be obliged to declare any Field located within the Contract Area as "not commercial" as long as the Exploration rights have not expired, including those which may be granted in accord with item 5.13.

As established in items 5.8 and 5.9 of the Bases approved by Decree Law No. 22774, the Hydrocarbons Fields which the Contractor may declare "not commercial" at any moment during the life of the Contract, shall revert to PETROPERU. The Contractor shall then lose all rights over the Natural Gas which is not used in the Operations or marketed, to PETROPERU, which shall be able to exploit it as it may desire. In both cases there shall be no reimbursement whatsoever for the expenses incurred or the investments made but without detriment to their being treated in keeping with what is provided in item 4.5 for purposes of factor "R".

- 4.22 Expiry of the exploration phase shall not affect the terms and conditions of the procedures described above, which may be under way at that time.

#### CLAUSE FIVE - EXPLOITATION

- 5.1 The exploitation phase starts the Day following the end of the exploration phase, provided a declaration of Commercial Discovery has

been made during the aforementioned exploration phase following either the procedure described in items 4.15, 4.16 and 4.17; or in item 4.18. However, the start of the exploitation phase and conclusion of the exploration phase may take place ahead of time if, after a declaration of Commercial Discovery is made, the Starting Date for Commercial Production takes place before the exploration phase has concluded.

The Contractor's obligations with respect to the exploration phase's guaranteed minimum work programs, except for those guaranteed work commitments of any stage or period still under way, end with the start of the exploitation phase.

- 5.2 The Contractor is committed to having the Starting Date for Commercial Production take place within the period of time stipulated in the "Initial Development and Main Pipeline Plan". If required, and by agreement between the Parties, this term may be extended up to one (1) Year.

Item 24.4.4's provisions shall apply in case of non-compliance.

- 5.3 Within the ninety (90) Days prior to the end of each calendar year during the exploitation phase, the Contractor shall submit the following to PETROPERU and to the General Hydrocarbons Bureau:

- 5.3.1 An annual work program and a detailed budget for exploitation in the following calendar year.

5.3.2 An annual work program and a detailed budget for the Exploration aimed at searching for additional reserves.

5.3.3 A work program with corresponding Development and Production cost, expense and investment projections for the following five (5) Years of the exploitation phase.

5.4 PETROPERU shall participate in the drafting of the programs and budgets provided for in item 5.3, as well as in their revisions and changes. They shall be approved by PETROPERU, in writing, within thirty (30) Days of their presentation. Should this time elapse without any comments from PETROPERU it shall be understood that they are approved. Should PETROPERU not approve the programs and budgets and/or their revisions and changes, the matter shall be submitted to the Supervisory Committee.

Once approved, the Contractor shall make the programs and budgets known to the General Hydrocarbons Bureau.

The Contractor shall be responsible for, and shall have technical control of all the Operations carried out in accord with the approved programs and budgets referred to in this clause.

5.5 Each work program shall have the Field's or Fields' rational development as its objective. In implementing each Development

Program the Contractor shall use the equipment that may be necessary and appropriate to allow a continuous monitoring of:

- a) Reservoir Pressure.
- b) Productivity index.
- c) Well and Reservoir characteristics.
- d) Physical and chemical characteristics of the Hydrocarbons.
- e) Typical reservoir rock and fluid parameters.
- f) Recovery efficiency.
- g) Proven, probable and possible Hydrocarbon reserves. Their periodic review shall be reported to PETROPERU and to the General Hydrocarbons Bureau. This listing is enumerative but not limitative.

5.6 When the Hydrocarbons Field's conditions so require, the Contractor shall submit to the Supervisory Committee, together with the explanations which each case might require, feasibility studies for pressure maintenance operations, secondary recovery or similar methods to increase the ultimate recovery of Hydrocarbons from the Field.

5.7 The Contractor is committed to carrying out a rational exploitation of the Contract Area's Field or Fields, in accord with the programs referred to in this clause five. Should PETROPERU consider that the Contractor is not complying with the obligation set out in the paragraph above without a technically justified reason, PETROPERU shall report this view to the Contractor. Within a period of sixty (60) Days following reception of this communication, the Contractor shall correct the non-compliance or shall start whatever measures might be necessary to correct it. Such measures shall be implemented in a continuous and diligent manner. Alternatively, the Contractor could choose to immediately notify PETROPERU that he does not agree with PETROPERU's observation as regards his non-compliance. In that case, and within the next fifteen (15) Business Days, a conciliation committee formed by three (3) members technically qualified on the subject shall be set up. Each of the Parties shall choose one (1) member, the third being chosen by agreement between the Parties. The conciliation committee's opinion shall be pronounced within a period of thirty (30) Days after its installation. Should the committee conclude that non-compliance exists the Contractor, in keeping with this opinion and within a period of thirty (30) Days, shall take steps to correct his non-compliance or shall start the measures which may be necessary to correct it.

If the Contractor does not implement measures to correct his non-compliance within such period, item 24.1 shall apply.

- 5.8 The Contractor may use the Hydrocarbons from the Contract Area for Operations.

The use to be made of such Hydrocarbons shall be determined by the Contractor in a rational and efficient manner taking their commercial value into account and may include, among others, their recycling or reinjection to maintain the pressure of a Field or of other Fields within the Contract Area.

- 5.9 The Contractor shall have the right to cool and separate the Liquid Hydrocarbons from any Natural Gas produced in the Contract Area and to remove the Liquid Hydrocarbons at any intermediate cooling stage, in case the Natural Gas were to be reinjected or compressed for any reason. Natural Gas shall be handled in accord with item 5.10's second paragraph.

- 5.10 Natural Gas which the Contractor does not use in his Operations as provided in item 5.8, must be re-injected or burned, unless PETROPERU requests that the Contractor deliver that Natural Gas to PETROPERU at the separation points or at the production batteries. This shall be done at no cost to PETROPERU.

Should PETROPERU request delivery at points other than those set out in the previous paragraph, and should this mean that the Contractor shall incur additional costs, PETROPERU shall reimburse the Contractor



for them, except if the Contractor, because of their magnitude, requests that they be advanced by PETROPERU.

- 5.11 The Oil which the Contractor delivers to PETROPERU at a Production Fiscalization Point may not contain more than zero point forty percent (0.40%) of free water or emulsion water and sediments (BS&W - Basic Sediments & Water), nor a salt content higher than ten (10) pounds (1 pound = 453.6 grams) per thousand barrels. Said Oil's temperature should be no higher than one hundred and forty degrees Fahrenheit, (140° F) unless the Parties come to some other agreement for technical reasons.

The specifications for the Natural Gas declared commercial and which the Contractor shall deliver to PETROPERU shall be agreed upon by the Parties before presentation of the "Initial Development and Main Pipeline Plan", or in the annual work program, as may be the case.

It is expressly agreed that all the products associated with the Hydrocarbons produced in the Contract Area, which for any reason are separated from said Hydrocarbons, shall accrue to PETROPERU and to the Contractor. The Contractor's share shall be in the same percentage as his compensation. Exceptionally, and for a limited period of time the Contractor, at PETROPERU's request and for PETROPERU's account, may market the latter's share, provided this can be done economically and commercially.

5.12 During exploitation the Contractor shall adapt his plans, programs and budgets so as to safeguard the national interest for the best use of the Hydrocarbons reserves, in keeping with the provisions of the legislation in force during the Term of the Contract.

5.13 Upon expiry of the sixth Year after the end of the exploration phase, the Contractor shall retain only that surface area of the Contract Area which contains every Field or Fields in Development or Production, (including those areas being used in the Operations). The area retained would also include a five (5) kilometer strip around the boundaries of said Deposits.

After the end of the term provided in the previous paragraph the Contractor may retain for a further four (4) Years those areas in which he can justify a firm Exploration program to PETROPERU, and obtain the General Hydrocarbons Bureau's approval. To make use of this right the Contractor shall notify PETROPERU and submit said program for its consideration one hundred and twenty (120) Days in advance of the expiry date of the term referred to in the previous item. At the end of this new period the Contractor shall only keep those areas covered by each Field, in accord with the previous paragraph's provisions.

5.14 Whenever emergency situations arise which affect PETROPERU's capacity to receive the Hydrocarbons produced by the Contractor, PETROPERU shall advise the Contractor as to the maximum volume of Hydrocarbons

it could receive during said emergency period. However, if conditions permit, the Contractor may continue producing above said maximum in which case, at PETROPERU's request and prior agreement, he shall export and market the surplus Hydrocarbons produced which belong to PETROPERU, for as long as the emergency situation continues.

- 5.15 By the end of the first Year after the Starting Date of Commercial Extraction, the Contractor shall submit to PETROPERU a five (5) calendar year or, if possible, a ten (10) calendar year Production forecast for each Reservoir.

Similarly, every calendar year the Contractor shall submit variations and adjustments thereof, if any, to PETROPERU.

- 5.16 When a commercially exploitable Field extends continuously from a structure located in the Contract Area into another, or other areas, the Contractor, in agreement with PETROPERU and/or with other contractors who may have these areas under contract, shall come to an arrangement on implementing a unified exploitation plan or a common exploitation plan, which must follow good engineering practice for the exploitation of Hydrocarbon Fields and be approved by the General Hydrocarbons Bureau.

- 5.17 The Parties recognize that in the future the Contractor might require project financing or some other type of financing for the investment it must make in keeping with the present Contract's provisions, or

some investment insurance for the Operations. To this end PETROPERU shall cooperate with the Contractor in supplying the information which might be necessary and reasonable, in PETROPERU's opinion, and shall help him in obtaining the State's and public agencies' cooperation for that same purpose.

It is expressly agreed that in no case shall there be any request for the State or for PETROPERU to offer any guaranty whatsoever, or to accept any similar or different commitment whatsoever, in the Contractor's favor, nor to incur any cost or expense whatsoever because of this. In no case shall the non, or partial, implementation by PETROPERU, the State or public agencies of what is provided in this item, in any way exempt or release the Contractor from complying with any of his obligations in accord with the provisions of the present Contract.

#### CLAUSE SIX - PRESENTATION OF INFORMATION AND STUDIES

- 6.1 The Contractor shall keep PETROPERU and the General Hydrocarbons Bureau regularly advised about the Operations, supplying all the information listed in this item as well as in items 6.2 and 6.8. Furthermore, he shall supply information as regards what he finds or discovers in the Contract Area during the Term of the Contract.

The Contractor binds himself to send PETROPERU copies of all original data and reports on geology, geophysics, drilling, wells and

production and any other he may prepare about the Operations under the present Contract.

The data and reports mentioned above shall include the seismic tapes, geological and structural maps, records, samples, cores and computer analyses.

Additionally, and once finally completed, the Contractor shall supply copies of all interpretations and studies he may prepare based on the technical data obtained from the Contract Area. The Contractor shall also supply any clarification which PETROPERU might request concerning said interpretations and studies.

PETROPERU may request the Contractor to perform studies on any aspect of the Operations or to change the way in which he presents the data he submits.

The Contractor's objections to such requests shall be submitted to the Supervisory Committee to be resolved.

- 6.2 The Contractor shall supply PETROPERU with the technical data listed in the "PETROPERU Data Bank" forms which are in use on the Date of Signing, in the manner and at the intervals stipulated in said forms. However, if in the future PETROPERU were to require such data in some other type of form, it shall so be supplied after prior agreement between the Parties.

6.3 The Contractor is obliged to directly supply the data needed for the Fiscalization which, in accord with the law, must be performed by the General Hydrocarbons Bureau. This without prejudice to the fact that PETROPERU, as titleholder of the Contract Area, will supply the official reports to the State.

6.4 All the data obtained from Operations by the Parties shall be kept strictly confidential and shall not be revealed by either of the Parties without the other's prior written consent.

In this sense all the reports, studies, maps, records, files and other data which the Parties might produce shall be confidential. This confidentiality extends to the Parties' and the Subcontractors' administrative personnel and their white and blue collar workers. This stipulation shall be included in the corresponding contracts entered into by them.

However, either of the Parties may reveal said data without such approval in the following cases:

- a) To one of said Party's Affiliates, making sure that such Affiliate undertakes a similar commitment of confidentiality;
- b) In connection with financings, similar confidentiality commitments being obtained;

- c) To the extent required by law, regulations or resolutions by competent authority including, without limitation, regulations or resolutions by government authorities, insurance organizations or stock exchanges in which a Party, or a Party's Affiliates, are registered;
- d) To consultants, accountants, auditors, financiers, professionals, possible buyers of the Parties, as may be necessary in relation to Operations, similar confidentiality commitments also being obtained.

In those cases in which the Parties agree to communicate certain confidential information to third parties, they must specifically preserve the confidential nature of said data in writing, so that it will not be made public.

6.5 Within one hundred and eighty (180) Days following the date on which the exploration phase term expires, the Contractor shall submit to PETROPERU an overall evaluation and analysis study for each of the exploration phase's stages or periods and of the Fields subject to a declaration of Commercial Discovery. This obligation will continue even if the Contract were to be cancelled.

6.6 PETROPERU may freely use all the data from that part of each block of the Contract Area which the Contractor might have released in keeping with the Contract's terms, except for the methods, techniques and

procedures which might be the Contractor's exclusive or proprietary property.

The aforementioned data must be turned over to PETROPERU within the ninety (90) Days following the end of the Month in which the aforementioned area's relinquishment takes place.

6.7 The daily or weekly statistics regarding the Contract Area's production must be made available to PETROPERU's authorized representatives for their review.

6.8 The Contractor must prepare the following reports, Field by Field:

a) "Monthly Production Report", including the following:

- The quantity and quality of Oil and Condensate and the amount of water produced in the calendar month.
- The cumulative quantity of Oil and Condensate produced and delivered at the Production Fiscalization Point from the Starting Date of Commercial Extraction to the end of the pertinent calendar month.
- The quantity and quality of the Natural Gas produced, delivered or reinjected in the calendar month.
- The quantity of Natural Gas produced, delivered or reinjected, or burned from the Starting Date of Commercial Production to the end of the pertinent calendar month.



- The quantity of Hydrocarbons used in Operations during the calendar month as well as the cumulative quantity from the Starting Date of Commercial Extraction to the end of the pertinent calendar month.
- The quantity of Hydrocarbons stocks in the Transportation and Storage System at the start of the calendar month.
- The quantity, quality and gravity of the Hydrocarbons exported by the Contractor during the calendar month.
- The cumulative quantity, quality and gravity of the Hydrocarbons exported by the Contractor from the Starting Date of Commercial Extraction to the end of the pertinent calendar month.
- The quantity of Hydrocarbons measured and delivered to PETROPERU at the Production Fiscalization Point during the calendar month.

The production report for each calendar month shall be submitted to PETROPERU at the latest ten (10) Business Days after the end of said calendar month.

In an attached letter PETROPERU shall be advised as to the reasons for any significant variations of Hydrocarbons' stocks as compared to the previous calendar month. PETROPERU shall have the right to itself check these stocks at any time.

b) Income and expenditures report:

In keeping with the Contract the Contractor shall prepare a report of income and expenditures under the Contract for each calendar quarter. The report shall separately categorize Exploration investments, Development investments, operations costs and overhead and administrative expenses, and shall identify the major investment categories as well as operations costs and expenditures within each. This report shall include the following:

- The actual income and expenditures for the pertinent quarter.
- Foreign staff costs per job description.
- Explanations for any major variations between budgeted amounts and actual income and expenditures for that quarter.
- Cumulative income and expenditures for the pertinent calendar year.
- The latest cumulative income and expenditures forecast made for the whole of the calendar year.
- Explanations for any significant variations between the original budget and income forecast projected for the pertinent calendar year and the latest forecast stipulated in the previous paragraph.

The income and expenditures report for each calendar quarter shall be submitted to PETROPERU no later than thirty (30) Days after the end of said quarter.

PETROPERU may request supporting data as well as clarifications for each and all of the items of the two (2) reports referred to in the present section.

- 6.9 In the month of January of each calendar year up to the Starting Date of Commercial Extraction the Contractor shall have to deliver to PETROPERU a report on his foreign currency investments made during the previous calendar year. Said reports must cover the annual periods up to the periods covered by the data referred to in the next paragraph.

After the Starting Date of Commercial Extraction the data for the next year shall be delivered on December fifteen (15) of each calendar year. In keeping with the provisions of clause eleven, it shall be in form and content the same as that which is submitted to the Central Reserve Bank of Peru.

- 6.10 The Contractor must duly report, and deliver to PETROPERU, a copy of the subcontracts he might enter into relating to Operations.

CLAUSE SEVEN - SUPERVISORY COMMITTEE

7.1 Without prejudice to item 2.3's provisions, supervision of the Contract's implementation shall be carried out by a Supervisory Committee formed, on behalf of one Party, by three (3) of the Contractor's representatives or their alternates and, on behalf of the other Party, by two (2) of PETROPERU's representatives or their alternates and one (1) appointed by the Joint Chiefs of Staff of the Armed Forces. Should the member of the Supervisory Committee appointed by the Joint Chiefs of Staff of the Armed Forces be unable to attend, the Joint Chiefs shall appoint an alternate.

The Supervisory Committee shall meet and draft its own procedural rules within the sixty (60) Days following the Date of Signing.

7.2 The Supervisory Committee shall have the following functions:

- a) To exchange opinions and discuss among its members all information pertaining to the Operations.
- b) To evaluate and approve the Exploration work programs referred to in item 4.7 as well as their timely implementation.
- c) To evaluate and approve the work programs, and estimated budgets and costs referred to in item 5.3 in the manner provided in item 5.4.

- d) To oversee the implementation of the plans and work programs referred to in items 4.15.c) and 5.3.
- e) To oversee verification of the Operations' technical and accounting work. To this end the Parties' representatives accredited to the Supervisory Committee may resort to the necessary advisory services.
- f) To verify compliance with all obligations pertaining to Operations which are provided in the present Contract or which the Parties may agree upon in any other document.
- g) To perform any other functions provided for in the present Contract or which the Parties may agree upon in any other document.

7.3 The Supervisory Committee shall be chaired by a PETROPERU representative. It shall meet every time either of the Parties requests it, in addition to the periodicity set out in its rules. Representatives of both Parties must be present for the Supervisory Committee to meet.

Each of the Parties shall bear the expenses involved in maintaining its respective members of the Supervisory Committee.

- 7.4 Except as hereinafter provided in this item, all Supervisory Committee decisions shall be made by the Parties' affirmative vote.

In case some disagreement arises and persists between the Parties in the Supervisory Committee, each of the Parties may request the technical or legal opinions it deems appropriate and shall submit them at a special meeting of the Supervisory Committee. Should the disagreement persist, it shall be resolved by the Parties' General Managers.

The opinions of the Committees referred to in item 5.7 and in sub-item 8.1.6, shall be made known to the Supervisory Committee without prejudice to their being acted upon, in conformity with those numbered items.

Since in clause four the Parties have already agreed upon the minimum Exploration work programs to be implemented, whenever a difference of opinion subsists about one of the exploration programs, the program submitted by the Contractor shall be the one implemented, provided it a minimum complies with the corresponding minimum guaranteed work. Such program could, however, include the proposals made by PETROPERU and accepted by the Supervisory Committee.

- 7.5 The Contractor, in accord with items 5.4, 5.5 and 5.6, shall submit and explain to the Supervisory Committee the programs regarding the

individual production profile for each Field and Reservoir, thus permitting discharge of the function under item 7.2.

CLAUSE EIGHT - COMPENSATION, VALUATION AND DOMESTIC MARKET

- 8.1 PETROPERU, as owner of all of the Hydrocarbons produced in the Contract Area, agrees to compensate the Contractor for executing the Operations. This will be done through a payment in kind by means of a volume of Hydrocarbons from the Contract Area turned over at a Production Fiscalization Point.
- 8.2 The Fiscalized Hydrocarbons must meet the specifications of item 5.11. Payment of the Contractor's compensation in kind shall take place at a Production Fiscalization Point, where ownership of the Fiscalized Hydrocarbons corresponding to the Contractor's payment in kind shall be transferred to him in the same type of Hydrocarbon that he delivers.
- 8.3 For purposes of determining the percentage that the Contractor shall receive as compensation for the Operations, the so-called "R" factor which is described in item 8.4, will be applicable to each Field, shall be used. The "R" factor has been established to take into account possible deviations in production, investment and operational cost assumptions as well as uncertainties regarding Hydrocarbon prices and the growth of the market for Natural Gas.

- 8.4 The "R" factor for each Field shall be determined by the following formula:

$$R = \frac{X}{Y}$$

Where:

X : Cumulative revenue actually received by the Contractor for his Operations as well as any generated from Contractor's normal operations under the Contract.

Y : Cumulative investments plus operational expenses and costs actually incurred in by the Contractor in relation to Operations from the Date of Signing of the Contract. These amounts shall not be reduced by their depreciation or amortization. To this end it shall be considered that they were incurred at the time the corresponding payments were made, regardless of whether they were borrowed or paid from his own funds. The only investments, expenses and operational costs not to be included in this element shall be financing expenses and those listed in items 2.1.f) and 2.2 of annex "E".

- 8.5 The compensation referred to in item 8.1 shall be that total volume of Hydrocarbons resulting from adding the individual quantities of Hydrocarbons from each of the Fields. Such individual quantities for each Field are calculated by applying the "R" factor percentage,



determined from the table given below, to the total daily volume of Fiscalized Hydrocarbons produced by such Field.

Contractor's Compensation	
"R" factor	% of Production
0 - less than 1	69
1 - less than 2	59
2 - less than 3	49
3 or more	40

- 8.6 The Contractor's initial compensation for every Field shall be calculated applying an "R" factor of "0 - less than 1". The Contractor must keep a special system of separate accounts for each Field, and record in them all of the elements that comprise "X" and "Y" in the formula set out in item 8.4.

The "R" factor shall be calculated Day by Day for each Field to be applied, also Day by Day, to determine the compensation which the Contractor must receive. At the end of each week in which there have been changes in a Field's "R" factor, the necessary corrections for such changes shall be netted-out, if not previously done during the week.

This netting-out shall be made without prejudice to, and independently of, adjustments which could apply in accord with item 8.8's provisions.

- 8.7 For purposes of calculating the "R" factor, the income from a Field Fiscalized Hydrocarbons production shall be allocated to that same Field. If the production of two (2) or more Fields be mixed, the income from the resulting mixture of Fiscalized Hydrocarbons produced shall be allocated among the Fields the mixture comes from, in proportion to each Field's production volume for the period in question.

Investments, expenditures and operational costs shall be allocated to one (1) Field, or allocated among Fields, as may be the case, in keeping with the rules given below:

- 1) All investments, expenditures and operational costs, starting with the Discovery Well, which can be allocated to a specific Field, including investments, expenses and operational costs for Development, Production, Transportation and Storage System, Main Pipeline and pipeline tariffs for the North Peruvian Pipeline, or any other pipeline, wholly or partially owned by PETROPERU or by third parties, shall be allocated to that Field.
- 2) The investment expenditures and operational costs allocations which cannot be directly or exclusively assigned to one Field, shall be allocated among all Fields which are operationally linked, in proportion to each of their production volumes. In the case of allocations between Liquid Hydrocarbon and Non-Associated Natural Gas producing Fields, the first

allocation shall be made in proportion to the income generated by each group of this class of Fields. Then, among Fields of the same class, that is, separately and among Liquid Hydrocarbon producing Fields; and then among Non-Associated Natural Gas producers be made in proportion to each of their production volumes.

- 3) From the Date of Signing to expiry of the Contract all Exploration investments, expenditures and operational costs, excluding those corresponding to any Discovery Well which results in commercial production and its respective Confirmation Wells shall be proportionally allocated among all producing Fields, in accord with the provisions of this item's paragraph 2.
- 4) If at any time any producing Field, or Field capable of producing, were to stop production in full or in part due to an order of the State, PETROPERU, or by agreement between the Parties, that portion of such Field's investments, expenditures and operational costs shall be allocated to the other producing Fields in the proportion which the shut-in production bears to former production or capacity for as long as such interruption lasts, in accord with the provisions in this item's paragraph 2.

- 5) If at any time any producing Field, or Field capable of producing, were to stop production in full or in part, by a unilateral and unjustified decision of the Contractor, that portion of the investments, expenditures and operational costs allocated, or which could be allocated, to that Field, will not be allocated to any other Field.
- 6) In case Condensate is being extracted from Non-Associated Natural Gas and that both, Non-Associated Natural Gas and Condensate, are being produced for marketing, the cost of drilling, completing and equipping the well or wells producing the aforementioned Non-Associated Natural Gas shall be allocated to the Condensate and Non-Associated Natural Gas Fields in a proportion to be agreed by the Parties.

Any issue related to assigning or allocating investments, expenditures and operational costs for purposes of calculating the "R" factor which has not been covered in paragraphs 1) to 6) above, shall be agreed upon by the Parties in such a way as to reflect the principles contained in this item.

- 8.8 If at any time the Parties determine that a mistake has been made in calculating the "R" factor for a Field, and should it turn out that a new "R" factor should be applied, or that the "R" factor should have been applied at a time different from when it was actually implemented, the corresponding correction shall be made, which will

come into effect as of the Day on which the error occurred. The Contractor's percentage compensation and PETROPERU's percentage shall be readjusted as of that Day. The then current value of the surplus or shortage of Hydrocarbons, as the case may be, delivered as compensation to the Contractor shall be determined in accord with the provisions of item 8.10. As of the first Day of the calendar month following the one in which the Parties determined that a mistake had been made, the Party favored by the mistake shall then deliver to the other Party a volume of those same Hydrocarbons which, in every delivery, must not exceed a maximum of twenty-five percent (25%) of the Contractor's compensation or PETROPERU's percentage, as the case may be, at the delivery date price and until the value of the volume of Hydrocarbons delivered or undelivered by mistake is fully covered. Interest shall be paid on the balances pending delivery from the date on which the error was made until delivery is completed.

- 8.9 The Contractor's compensation in Fiscalized Hydrocarbons as provided in item 8.5 shall be changed as provided for in this item of the Contract, in the circumstances described herein. In this case all the compensation percentages contained in the table included in said item 8.5 shall have to be adjusted. The amount of the Contractor's payment in kind as provided in item 8.5 of the Contract has been determined considering the effective rate of Peruvian Taxes, including income taxes and taxes on the income available to the owner of record abroad, under the tax laws, regulations and interpretations in force at the Date of Signing. To this end the effective rate is understood to be

the one which results from applying the rates in force to the taxable event and the manner in which it is determined every time. Each time during the Term of the Contract changes are made in the laws, regulations or interpretations of the tax system in effect at that time which cause changes in the effective rates of income tax or other Taxes, increasing them or reducing them, the Contractor's compensation in kind shall be changed.

When such variations result in changes in the income taxes' effective rates, the Contractor's compensation shall change in keeping with the following formula, where all the percentages shall be converted to their decimal equivalents:

$$X = X_o \left| \frac{(1 - T_o)}{(1 - T)} \right| - C \left| \frac{(T - T_o)}{(1 - T)} \right|$$

Where:

X : Compensation contemplated by item 8.5 amended in keeping with this item, expressed as a percentage.

Xo : Applicable compensation in accord with item 8.5, expressed as a percentage. An independent calculation must be made for each percentage included in the compensation scale.

T : New tax rate for income taxes, expressed as a percentage.

To : Income tax rate as of the Date of Signing, expressed as a percentage. Said effective tax rate is the one which results from the tax system in force at that date.

C : Number obtained by dividing all costs of annual operations and the annual depreciation incurred by the Contractor by the Contract Area's total annual income. This total annual income is calculated by multiplying the total annual volume of Hydrocarbons produced in the Contract Area, corresponding to both Parties, by the average weighted price received by the Contractor for his share of the Hydrocarbons.

In the case of income taxes this formula shall be applicable only when the Contractor has taxable profits.

Except as provided in the present item's last paragraph and notwithstanding the guaranty given in item 9.8, when changes in the laws, regulations or interpretations of the tax system have resulted in changing some other Tax's effective rates, increasing them or reducing them, the Contractor's compensation shall be changed in such a way that the compensation's adjustment shall be equivalent to the amount of the variation of the Taxes in question.

The Parties shall define the formula or procedure to be applied taking the formula contained in this item as the basis, together with

whatever changes or modifications which may have to be introduced because of the nature or type of the Taxes in question.

The tax incentives or benefits which may be granted in the future specifically to promote oil activities in Peru shall be applicable to the Contractor when so specifically provided in the law. This shall not imply any change in the Contractor's compensation (as fixed in item 8.5).

8.10 For all of the present Contract's purposes the value of each of the different Hydrocarbons coming from the Contract Area shall be expressed in Dollars and shall be determined as indicated below:

8.10.1 For sales to Third Parties the value of the Liquid Hydrocarbons shall be the F.O.B. price, Peruvian export port, payable in thirty (30) or more Days, which appears in the sales invoice or in the export documents.

8.10.2 For sales to Affiliates or to PETROPERU for the domestic market the value of the Liquid Hydrocarbons shall be that of the international market, determined as follows:

8.10.2.1 Before starting each Field's commercial production, the quality of the Liquid Hydrocarbons to be produced from said Field shall be determined.



Should Liquid Hydrocarbons of different qualities be mixed, the quality of the resulting mixture shall be determined.

8.10.2.2 In the case of Liquid Hydrocarbons and after having made the determination referred to in the previous sub-item, the Parties shall select a basket of one or more Liquid Hydrocarbons. The basket's components must be competitive in the market or markets where the Liquid Hydrocarbons being valued from the Contract Area are to be sold.

The price of each of the types of Liquid Hydrocarbons which are components of the basket shall be the one published in "Platt's Oilgram Price Report" or other sources recognized by the oil industry, with the adjustments the Parties agree upon and which might be necessary on the basis of quality, transportation or other differences.

Such adjustments must be reviewed by the Parties at least every six (6) Months and whenever they deem it appropriate.

The average price for each of the Liquid Hydrocarbon components thus chosen, shall be determined based on

the mean daily quotations, averaged in turn, during the valuation period agreed by the Parties, as provided in sub-item 8.10.2.3, for which the average price of the basket is calculated.

The average prices determined in accord with the foregoing for the basket's components, shall be averaged in turn so as to fix the F.O.B. value, Peruvian port of export, of the related Liquid Hydrocarbons produced in the Contract Area.

8.10.2.3 The value of the different Liquid Hydrocarbons shall be determined for a given valuation period. Said period (week, month, quarter or other) shall be agreed upon by the Parties in the agreement referred to in sub-item 8.10.2.6, taking into account the market conditions at that moment. The valuation period may be shortened or extended by agreement of the Parties if it is determined that the period chosen is inappropriate taking into account the market conditions then existing for one (1), some, or all of the aforementioned Liquid Hydrocarbons.

8.10.2.4 If at any time one of the Parties feels that the application of the valuation method provided in the previous sub-paragraphs does not result in a

realistic determination of the international market value of one, some, or all the Contract Area's Liquid Hydrocarbons, or if there is no quotation for any of the Liquid Hydrocarbons forming part of the basket, the Parties might agree on the application of a different method or some variation of the same method which will effectively produce the same objective.

8.10.2.5 In the event that in the future the price of one or more of the Liquid Hydrocarbons forming part of the agreed basket, were quoted in some currency other than the Dollar, said prices shall be converted to Dollars, at the average exchange rates quoted by the City Bank N.A. of New York, New York, and the Chase Manhattan Bank N.A. of New York, New York.

8.10.2.6 Once the determination referred to in sub-item 8.10.2.1 has been made for Liquid Hydrocarbons, the Parties shall sign an agreement which shall establish the additional terms and conditions required for the application of the sub-items above.

8.10.3 The value of the Natural Gas shall be that fixed as the price in the sales contracts.

8.10.4 The sales price .O.B. Peruvian export port, for the Liquid Hydrocarbons sold by the Contractor to his Affiliates shall be the value in effect on the Day the export takes place determined in accord with the provisions of sub-item 8.10.2.

8.10.5 The sales price for the Liquid Hydrocarbons sold to PETROPERU for the domestic market during a calendar month shall be the weighted average of the values in effect over the time of each of the deliveries made during said calendar month.

Exceptionally the sales price for the Liquid Hydrocarbons sold to PETROPERU for the domestic market, delivered at some Production Fiscalization Point located on the North Peruvian Pipeline or in some other pipeline partially or wholly owned by PETROPERU, shall be the price established in the paragraph above less the tariff paid for the use of any of said pipelines and of the storage and loading facilities fully or partially owned by PETROPERU, calculated in accord with the provisions of item 12.12.

8.10.6 Should the Parties be unable to arrive at any of the agreements contemplated in item 8.10, either of them may request an expert opinion. By agreement between the Parties said opinion shall be given by an individual

technically qualified on the subject. Should the Parties be unable to agree on the person, a committee consisting of three (3) members technically qualified on the subject shall be formed. Each of the Parties shall choose one (1) member while the third shall be chosen by joint agreement of the two (2) members chosen by the Parties. The expert's or the committee's opinion shall be given within the thirty (30) Days following his appointment or on the date the committee was formed, as may be the case.

The expert's or the committee's opinion shall just be a recommendation which will not be binding. If twenty (20) Days after the aforementioned opinion has been received, the Parties have arrived at no agreement on the disputed subject, either of them may submit the matter to the courts and judges of Peru as per clause twenty-two's stipulations.

While the disputed question is being resolved, the last valuation agreed upon shall continue to be applied, except if the Parties agree on applying some other temporary measure or solution. Appropriate adjustments shall be made once the final solution is arrived at.

8.11 As provided by this Clause PETROPERU has the right to buy, which may be exercised as specified below, and the Contractor the obligation to

sell, at a Production Fiscalization Point, a volume of Hydrocarbons up to the Contractor's total compensation, to satisfy the demand for domestic consumption.

8.11.1 With respect to Liquid Hydrocarbons, the Contractor's obligation to sell is based on the premise that each and everyone of Peru's Liquid Hydrocarbons' producers, including PETROPERU, contribute at all times and in proportion to their production volumes, to satisfying the domestic consumption demand. PETROPERU shall exercise its right by giving the Contractor six (6) months' written notice in keeping with item 21.1, specifying the volume of Fiscalized Liquid Hydrocarbons of the Contractor's compensation which shall be bought under this item during the six (6) calendar months following expiry of the aforementioned notice term, which may have a monthly operating variation of plus or minus ten percent ( $\pm 10\%$ ).

Fifteen (15) Days prior to the aforementioned notice, PETROPERU must advise the Contractor in writing about all the elements it has used to calculate the application of the formula indicated further on in this sub-item.

If during any purchasing period by for reasons of force majeure or an Act of God other contractors or PETROPERU cannot contribute their proportionally to satisfying the

needs of the domestic market, the volume of the Contractor's share in this market's requirements will be increased. Contractor will sell the necessary additional quantities in accord with the present clause's terms and conditions while the cause of force majeure or Act of God is being resolved and until the proportional contributions to satisfying the domestic market's requirements can be reestablished. This additional obligation does not include those production volumes contracted for sale in the export market whose loading period be fixed within the forty (40) Days subsequent to the date on which the Contractor receives PETROPERU's notice of the occurrence of the aforementioned case of force majeure or Acts of God.

The purchases (volume) which PETROPERU needs to satisfy domestic consumption demand shall be determined as follows:

In any calendar month the quantity of Fiscalized Liquid Hydrocarbons to be purchased must not exceed the amount determined by using the following formula:

$$Q = \frac{(P + I - E) C}{P} - T$$

Where:

Q : Maximum quantity of Contractor's Fiscalized Liquid Hydrocarbons subject to purchase in said Month.

C : Quantity of Fiscalized Liquid Hydrocarbons received by the Contractor as compensation during said Month.

P : Total quantity of Fiscalized Liquid Hydrocarbons produced in Peru during said Month.

I : Total quantity of Liquid Hydrocarbons and products imported by Peru during said Month.

E : Total quantity of Liquid Hydrocarbons and products exported from Peru during said Month, including that portion of Liquid Hydrocarbons used as fuel to refine such Derivatives.

T : Quantity of Fiscalized Liquid Hydrocarbons delivered by the Contractor for Tax payments in kind during said Month.

The quantity resulting from applying the aforementioned formula shall be prorated among the different types or kinds of Liquid Hydrocarbons produced by the Contractor,



as parts of the monthly volume of Fiscalized Liquid Hydrocarbons.

8.11.2 If the quality of the Fiscalized Liquid Hydrocarbons purchased by PETROPERU from the Contractor under this clause from the Fiscalized Liquid Hydrocarbons which the Contractor produces from the Contract Area is not suitable for national refineries, PETROPERU shall have the right to exchange such Fiscalized Liquid Hydrocarbons for others which meet the required conditions, without this affecting the volumes resulting from the application of the formula set out in sub-item 8.11.1.

8.11.3 The Contractor's obligation to sell Natural Gas shall be agreed in due course.

8.12 The price of the Hydrocarbons sold in accord with the provisions of the previous item shall be paid within the thirty (30) Days following presentation of the corresponding monthly invoice covering the purchases of the previous calendar month.

Payment of the invoice after expiry of the term stipulated in the previous paragraph shall require the payment of interest, calculated Day by Day, at the prime rate of the Chase Manhattan Bank N.A. of New York, New York, plus three (3) percentage points.

Such prices shall be set in Dollars and paid in local currency. The exchange rate provisions of clause eleven shall be applicable.

If PETROPERU, at its option, chooses to pay any of the invoices before expiry of the thirty (30) Day period, the Contractor shall make a discount for prompt payment. For every Day of payment in advance of expiry of the thirty (30) Day period, the discount shall be the one resulting from applying the prime rate of the Chase Manhattan Bank N.A. of New York, New York, to the sum paid in advance.

- 8.13 In the improbable case that for any reason PETROPERU fails to pay the Contractor promptly on time all or part of the amount of an invoice for the sale of Liquid Hydrocarbons for the domestic market, and said non-compliance continues for a period of five (5) Business Days, the Contractor shall have the right to request PETROPERU to export a volume of Liquid Hydrocarbons whose value shall be no greater than that of the Contract Area's exportable Liquid Hydrocarbons and apply the product of said export, as necessary, to the payment of the pending invoice and its respective interest. To this end PETROPERU shall give irrevocable instructions to the pertinent banking institutions for them to deliver directly to the Contractor the pertinent foreign currency certificates or the local currency resulting from said exports, as may be the case every time.

For the sole purpose of the previous paragraph's provisions and item 11.11 it shall be considered that the exportable amount of PETROPERU's

Liquid Hydrocarbons from the Contract Area in a given calendar month shall be that part of all the Liquid Hydrocarbons produced in the Contract Area which PETROPERU has received at the Production Fiscalization Point after deducting the compensation paid to the Contractor, multiplied by a percentage equal to the percentage of the Contractor's compensation which after the application of the formula contained in sub-item 8.11.1 is available for exportation in that same Month.

- 8.14 Deliveries of Hydrocarbons to PETROPERU in payment of the income tax and of the tax on the income available to the owner of record abroad, shall be made at the Production Fiscalization Point and shall be valued according to law.
- 8.15 The Contractor will be authorized to export and to dispose of the Fiscalized Hydrocarbons he receives as compensation, in accord with this clause, subject to the limitation provided in item 8.11 and in compliance with clause eleven. The proceeds flowing from the Contractor's export sales, as well as the proceeds of his domestic sales, shall be the Contractor's exclusive property.
- 8.16 The volume and quality of the Hydrocarbons produced in the Contract Area and not used in the Operations, shall be measured daily by the Parties at each Field and at the Production Fiscalization Point. They shall use methods in keeping with good international oil industry practice, and equipment supplied by the Contractor, both approved by

the General Hydrocarbons Bureau, for purpose of carrying out the provisions of items 8.5, 8.6 and 8.7.

- 8.17 At all reasonable times PETROPERU and the General Hydrocarbons Bureau may inspect and test the equipment used to measure the volume and determine the quality of the Hydrocarbons, provided such inspections or tests do not interfere with normal operations of the facilities involved.

The measuring instruments shall be periodically calibrated in accord with the standards then in effect, after prior written notice and in the presence of the competent authorities and of PETROPERU.

If it is found that any of the measuring instruments is not usable, the Contractor shall repair it or replace it by another whose use is approved by the General Hydrocarbons Bureau.

- 8.18 Before the Starting Date of Commercial Production the Supervisory Committee shall agree on the following:

- The time for making measurements.
- The methods to be used to optimize the measuring of Hydrocarbon production volumes.
- The frequency of inspections, testing and calibration of measuring equipment.
- The consequences of finding an error in measuring.

Such agreements, as well as any changes or amendments to them, shall be submitted for approval to the General Hydrocarbons Bureau.

CLAUSE NINE - TAXES

- 9.1 The Contractor is subject to the common tax system of the Republic of Peru. Except as provided in items 9.5, 9.6 and 9.7 PETROPERU shall pay no Tax whatsoever nor accept any tax liability of any kind which, in accord with the law, is for the account of the Contractor, his Subcontractors, their staffs and/or third parties.
- 9.2 The Contractor is included within the scope of the common tax system applicable to companies in general, and within the appropriate provisions applicable to oil activities in keeping with the provisions of Decrees Law Nos. 22774 and 22775, their regulations, extensions and amendments in force during the Term of the Contract.
- 9.3 The Contractor, in accord with the provisions of items 9.1 and 9.2, shall pay all of the Taxes accruing to him in the manner and within the terms provided by tax laws, directly and with his own resources.

The Contractor shall deliver to PETROPERU at the Production Fiscalization Point the Hydrocarbons corresponding to the payment of the income tax and the tax on the income available to the foreign owner of record abroad.

9.4 PETROPERU is not responsible for the Contractor's tax obligations, whether material and/or formal, which might affect him, his staff and/or his Subcontractors, and/or the latter's staff, because of Taxes, debt readjustments, surcharges, fines and interest, nor for the presentation of data to Tax administration agencies nor for any other tax responsibility arising through any action or omission by the Contractor, his staff and/or his Subcontractors and/or the latter's staff, arising from his direct contract relationships with them and within the scope of the law.

In no case shall PETROPERU assume any obligation arising from an infringement, error, action or omission as regards Taxes and other tax obligations accruing to the Contractor and/or his Subcontractors, the latter's staff or third parties.

9.5 In accord with item 10.1, PETROPERU shall pay the Taxes applicable to the imports of capital goods and other items required by the Contractor to implement the Operations.

9.6 Payment of the Taxes applicable to Hydrocarbon exports which the Contractor may make in accord with item 10.6 shall be PETROPERU's expense and responsibility.

9.7 The payment of fees, rates, royalties and other similar obligations applicable to the production shall be PETROPERU's responsibility.

9.8 In keeping with the law the Contractor is guaranteed that during the Term of the Contract no new tax specifically levied on oil activities shall apply to him.

9.9 In compliance with item 7.14 of the Bases approved by Decree Law No. 22774, and as has been provided in Law No. 24782, the Contractor shall use the linear amortization method for the five (5) calendar year period beginning with the calendar year corresponding to the Starting Date of Commercial Production.

The aforementioned linear amortization shall be applied to all Exploration and Development expenses and to all investments which the Contractor makes from the Date of Signing to the Starting Date of Commercial Production.

It is agreed that the aforementioned amortization term shall be extended, but in no case exceeding the life of the Contract, if by reason of prices or for whatever other factor agreed upon by the Parties and after applying the linear amortization referred to in the previous paragraph, the Contractor's financial statements show a negative result or a fiscal loss which, in the Contractor's opinion, shall continue and cannot be made up for fiscal purposes under the tax legislation then in effect. Advance notice of the extension of the amortization period shall be given to the National Tax Administration Superintendency.

- 9.10 In accord with the provisions of article 71, item 1, of the Tax Code, the Contractor shall keep his accounts in Dollars. Hence, determination of the tax base for the Taxes which are for Contractor's account, as well as the amount of said Taxes and their payment, shall be made in said currency. When, in keeping with legal provisions then in effect the Taxes have to be paid in kind, its value shall also be fixed in such currency.

CLAUSE TEN - CUSTOMS DUTIES

- 10.1 The Contractor shall be authorized to import and/or temporarily bring into Peru, in accord with legal provisions then in force, any goods necessary for the Contractor to implement Operations economically and efficiently, and which will be used exclusively in said Operations, regardless of whether the property rights over such goods are the Contractor's or his Subcontractors', provided a responsible representative of the Contractor certifies to PETROPERU that the goods intended to be imported or temporarily brought in shall be used for the Operations and that, at the time the request is being made, it is impossible to obtain them in Peru in competitive terms as regards quality, price and delivery terms. In the future, if the relevant legislation allows it, maintenance shall be considered among the criteria mentioned above.

PETROPERU shall pay the appropriate assessing agency the customs duties and, in general, any Taxes applicable to imports of capital



goods and other items, to the extent that the exemptions provided by law on the subject are not applicable.

PETROPERU shall not be responsible for payments in excess of the Taxes applicable to imports of capital goods and other items necessary for the economic and efficient implementation of Operations which result from any action, omission or mistakes by the Contractor, his Subcontractors, his staff and/or his customs agents.

The Contractor, to the extent allowed by legal provisions then in effect and supported by necessary documentation, shall request PETROPERU to apply for the temporary introduction of those goods which shall remain in Peru for an estimated period of no more than four (4) Years, or the period which may be legally in force at any given time. Such goods may be subsequently "nationalized" (formalize its entry into the country by paying the import duty) at the Contractor's request if his needs so require it.

In all cases the bond to be posted for temporary introduction, or the import duties, shall be for PETROPERU's account to the extent that legislation then in effect does not grant any exemptions.

The Contractor and his Subcontractors bind themselves to make use of all exemptions and/or customs duties exonerations which the law permits, after filing any documentation required. Any larger payments made due to not making use of the aforementioned exemptions and/or

exonerations shall be for the Contractor's account, except as agreed to the contrary by the Parties.

Prior to any importation the Contractor must clearly differentiate between imports of goods destined for Exploration, both for the Contractor as well as for his Subcontractors, from those destined for Production and Development, and report this in writing to PETROPERU.

The Contractor shall submit to PETROPERU an annual estimate of the value of his imports, as well as any significant variations at the time when they can be estimated, and a monthly report on the goods actually imported, in the manner determined by the Supervisory Committee.

- 10.2 The Contractor and his Subcontractors, after prior written authorization by PETROPERU, may by law sell or re-export any goods which have been imported or nationalized under this clause ten, on the condition that before the effective date of sale of such goods the Contractor reimburse PETROPERU for the amount of the import duties paid at the time by PETROPERU.

Goods which remain in the country less than four (4) Years and which can be temporarily used in keeping with item 10.1, may be reexported after prior reimbursement to PETROPERU of the import duties it paid at the time. The Contractor shall pay any Taxes applicable to exporting such goods.

The reimbursements which the Contractor makes to PETROPERU shall be reconverted to their Dollar value at the exchange rate in effect at the time the expense was incurred and shall be paid in local currency.

PETROPERU shall have a preferential right to purchase the goods referred to in the present item. To this end the Contractor shall advise PETROPERU as to the terms of sale and price in Dollars and PETROPERU shall advise him if it wishes to exercise this right within the thirty (30) Days following receipt of the notice. Should PETROPERU not wish to exercise this right or does not send a reply within the aforementioned term, the Contractor may sell them to third parties under terms no less favorable than those offered to PETROPERU. Should PETROPERU state its desire to acquire the goods but does not do so within sixty (60) Days following the date of its reply, the Contractor may sell them to third parties under such terms and conditions it may deem appropriate.

Without prejudice to what has been previously provided, in case the goods imported or nationalized under this clause ten are to be sold to PETROPERU, to another contractor under contract under Decree Law No. 22774, or some agency entitled to import said goods into Peru duty free, neither the Contractor nor the purchaser shall be required to pay for, or reimburse, such duties.

Should the Contractor sell to some other contractor performing pursuant to Decree Law No. 22774 in an area of higher Taxes, PETROPERU

shall pay the differential taxes due to the pertinent tax assessing agency, in accord with the provisions of item 10.1. In case the sale is made to another Contractor under contract as per Decree Law No. 22774 and operating in an area of lower Taxes, the selling Contractor shall reimburse PETROPERU for the existing difference in Taxes.

- 10.3 Goods imported or nationalized in keeping with this clause ten and which in the Contractor's or his Subcontractors' opinion should be scrapped because they are no longer suitable economically for the use to which they were placed, must be offered to PETROPERU at no cost as they are and where they are. Should PETROPERU not accept them the Contractor or his Subcontractors may freely dispose of such goods, without any payment or reimbursement of the Taxes which may have been paid for their import or nationalization.
- 10.4 All customs operations shall be subject to the respective customs documentation and procedures, according to law.

The Contractor and his Subcontractors shall carry out all the necessary customs clearance work. PETROPERU, at the Contractor's request, shall cooperate to the extent possible in the customs clearance procedures but, in no case and for no reason whatsoever, shall PETROPERU have any responsibility or commitment of any sort for the customs clearance of the goods imported by the Contractor and his Subcontractors under the present Contract.

10.5 PETROPERU reserves the right to inspect the goods imported under this clause to determine whether said goods are being imported or have been imported exclusively for Operations.

10.6 The Contractor shall be authorized to export all the Hydrocarbons he receives as Compensation as provided in clause eight or which are his for any other reason, after having complied with the provisions of item 8.11 and PETROPERU shall pay the Taxes corresponding to such exports.

#### CLAUSE ELEVEN - FINANCIAL RIGHTS

##### 11.1 State Guaranty

The Central Reserve Bank of Peru participates in the Contract so that the State, in accord with the provisions of Decree Law No. 18890, the Bases approved by Decree Law No. 22774, partially amended by Decree Law No. 22862 and by Law No. 24782, Supreme Decree No. 010-80-EF and Supreme Decree No. 152-80-EF, guarantees to the Contractor the free, direct and immediate availability of foreign currency in accord with the form, conditions, proceedings and mechanisms provided in this clause.

##### 11.2 Scope of the Guaranteed Remittances - Production Stage

The State, through the Central Reserve Bank of Peru, guarantees to the Contractor the free, direct and immediate availability of foreign currency to be used for the following purposes, as of the Starting Date of Commercial Production:

a) Depreciation

The sums necessary to remit the depreciation of the amount invested in foreign currency and of local currency re-investments made with resources with a right to being remitted abroad by the Contractor.

The concept of remittable depreciation also includes:

- 1) Amortization under the repatriable investment concept, which may be carried out with its own or Affiliate resources, which in turn includes all the Contractor's expenses as well as investments in fixed assets made by the Contractor with said resources up to the Starting Date of Commercial Production, including the cost of the wells; and
- 2) The balance to be depreciated of those goods which are obsolescent or scrapped, in accord with legal provisions in force and provided this is accepted by the National Tax Administration Superintendency.

In accord with the provisions of item 8.5 of the Bases and article 9 of Supreme Decree No. 010-80-EF and its amendments to date, remittances abroad for depreciation under the authority of the Contract, must meet the following requirements:

- i) They may not exceed the total amount invested by the Contractor in foreign currency plus the amount of the reinvestments in capital goods in local currency originating from resources with a right to be remitted abroad by the Contractor.
- ii) The financial statements which the Contractor submits to the National Tax Administration Superintendency through its sworn tax statement, must show an accounting profit in keeping with the balance sheet after income tax or show an accounting loss for an amount less than the depreciation taken for that same fiscal year. In this latter case, the remittance of depreciation shall be limited to the difference between the amount of the depreciation and the accounting loss shown by said financial statements.
- iii) Remittances shall be made using its own funds.
- iv) In his accounting the Contractor shall maintain a special account to keep track of remittances of the remittable depreciation items, and in which it shall credit the amounts invested or reinvested and debit the amounts remitted, until it balances out at zero. Any depreciation amount not remitted in one calendar

year, may be carried forward for its subsequent remittance in the following calendar years, provided it is included in the respective projections.

- v) Loans from Affiliates must first be approved and registered by the Central Reserve Bank of Peru as provided in this item's d) below.

b) Profit

The sums necessary to remit the whole of the profit available to the Contractor's head office abroad.

The profit available to the Contractor's head office abroad is the accounting profit appearing in the financial statements which the Contractor submits to the National Tax Administration Superintendency minus the taxes provided in articles 62 and 63, item b) of the Sole Orderly Income Tax Text approved by Supreme Decree No. 185-87-EF and its amendments.

The annual availability of foreign exchange for the Contractor's head office shall be limited to a sum equivalent to the depreciation of the amount invested in accord with paragraph i), plus the available profit.

In making depreciation and profit remittances no financing shall be permitted to cover the negative balances resulting from



calculating depreciation plus the profit available to the Contractor's head office.

c) Justified Services

The sums of foreign currency needed for advisory services, technological research and other justified services performed abroad and/or in the country, provided they are directly, and specifically, related to the Operations which the Contractor carries out in Peru in implementing the Contract, which are deductible to determine the net income and provided they are foreseen in the "Annual Projection of Foreign Currency Needs and Availabilities" in keeping with the conditions provided in this clause's item 11.7.

Should the Contractor need to resort to foreign loans to pay abroad for services related to the Operations referred to in this Contract, rendered abroad and/or in the country, in compliance with Decree Law No. 21953 the proceeds of that loan or the part thereof allocated to paying for said services, shall be deposited in the Central Reserve Bank of Peru, in Dollars, in a current account in a correspondent bank abroad, as it is being disbursed. For the Contractor to use the funds deposited in said account the Central Reserve Bank, upon opening it, shall give the correspondent bank appropriate irrevocable instructions to the effect that the Contractor shall have the exclusive right to draw against the aforementioned account. The Contractor may

immediately draw against the funds deposited in said account provided he meets the conditions set out in this item.

The Central Reserve Bank of Peru shall authorize the use of the proceeds of the loan obtained to cover said payments after it has received a sworn statement from the Contractor that the payment has to do with a contract registered with the General Hydrocarbons Bureau as well as such expenditure's supporting documentation. The Central Reserve Bank of Peru shall then deduct the amount used from the services item of the forecast in effect. The Central Reserve Bank of Peru shall review the documents which the Contractor submits to this regard within a term of no more than two (2) Business Days after receipt of PETROPERU's technical opinion which, in turn, must be submitted within the five (5) Business Days following the Contractor's presenting to PETROPERU a copy of the documentation submitted to the Central Reserve Bank of Peru.

Should no loan have been entered into, or should such loans not be sufficient, the Central Reserve Bank of Peru shall sell the Contractor the foreign currency needed to cover the aforementioned payments, after the procedure described in the paragraph above has been followed.

d) Loans

The sums needed to amortize the loans entered into abroad with Affiliates or third parties and to pay the interest on the loans entered into with third parties abroad, for those Operations under the Contract to be carried out in the nation after the Starting Date of Commercial Production, as provided in the Contract, as well as on the loans from third parties during the pre-production stage, to which item 11.3 refers. The Central Reserve Bank of Peru shall subtract the amounts sent out from the forecast in effect.

For the availability of foreign currency which the Contractor needs to amortize loans and pay interest, it shall be a mandatory requirement that the loan have been previously approved and registered with the Central Reserve Bank of Peru and that the principal has been turned over to said bank as it was being disbursed, or that the imported goods bought with such loans have been registered with the Central Reserve Bank of Peru in accord with article 9 of Decree Law No. 18890, and be specifically related to the Operations under the Contract.

The Contractor may prepay the loans entered into abroad, either with Affiliates in the production stage or with third parties when the pertinent legal provisions permit it or do not forbid it and the Central Reserve Bank of Peru authorizes it.

The foreign currency which the Contractor delivers to the Central Reserve Bank of Peru must be Dollars or some other currency with which the bank works.

Whenever he deems it necessary the Contractor may make partial remittances to cover the purposes referred to in the present Clause. Furthermore, any delay, arrears or partial remittance for any of the purposes referred to in this clause shall in no way mean that the Contractor's right to later cover them is in any way limited or lost, provided it is included in the appropriate forecast.

#### 11.3 Loans in the Pre-production Stage

If before the Starting Date of Commercial Production the Contractor were to need to resort to loans from third parties, as distinct from Affiliates, for the Operations referred to in this Contract, such loans shall be previously approved and registered by the Central Reserve Bank of Peru in the manner prescribed in item 11.1, above.

In order for the foreign currency which the Contractor needs to amortize loans and pay interest to be made available, it shall be a mandatory requirement that the principal has been previously delivered to the Central Reserve Bank of Peru or that the imported goods bought with loans have been registered in said Bank and are specifically related to the Operations under the Contract.

Consequently, the expenses the Contractor may charge against such loans shall not be part of the repatriable investment referred to in sub-paragraph a) of this clause's item 11.2 and may not be remitted as depreciation.

11.4 Application of Other Legal Provisions

- a) The availability guaranty which the Central Reserve Bank of Peru grants the Contractor shall continue in force during the Term of the Contract subject to compliance with the conditions expressly stipulated in this clause eleven.
- b) The Contractor shall have the right to resort to new legal provisions which may be enacted on the subjects covered by the present clause should such legal provisions mean a more favorable exchange system and provided they are of a general nature or are applicable to Hydrocarbons activities.
- c) Additionally, and without prejudice to the availability guaranty provided for in this clause, the Contractor shall have the right to resort to provisions in the exchange regulations in effect during the life of the Contract on those subjects not specifically contemplated in the present clause, to the extent that such exchange regulations permit it.

The Contractor's use of new legal exchange provisions which may be enacted, to exchange regulations on subjects not contemplated

in the present clause, or to free exchange systems which be implemented during the Term of the Contract, shall not affect the availability guaranty which is granted in accord with the present clause, so much so that the Contractor, at any time whatsoever, may again resort to said guaranty.

11.5 Delivery to the Central Reserve Bank of Peru of the Foreign Currency from Export Sales

The Contractor is obliged to deliver to the Central Reserve Bank of Peru all of the foreign currency from the export sales of the Hydrocarbons owned by him as his payment in kind, in keeping with Decrees Law Nos. 18890, 21953 and 22774, Exchange Resolution No. 001-81-EFC/90 and their amendments, the Contract and the complementary legal provisions in effect at that time.

Hydrocarbon export sales must be made through an irrevocable documentary letter of credit confirmed by a bank established in the country, which must show the percentage of the F.O.B. Peruvian export port value of the export which must be credited to each of the "Special Accounts" referred to by this clause's item 11.6 or, alternatively, the amount of the F.O.B. Peruvian export port value which must be credited to "Special Account No. 1" and indicating that the remaining balance must be credited to "Special Account No. 2". The letter of credit shall expressly indicate the bank or banks chosen in which the participating local bank must directly make the deposits, pursuant to item 11.6.

However, in the case of sales to Affiliates, the letter of credit may be replaced by a revolving documentary credit or, at the Contractor's request and provided it is acceptable to the Central Reserve Bank of Peru, by some other form of guaranty.

The Contractor's obligation to deliver the foreign currency at the F.O.B. Peruvian export port value of the exports shall be discharged within five (5) Days of the exports' being paid for or, alternatively, within a term of no more than thirty-five (35) Days commencing with the date on which the Contractor made the shipment, whatever comes first. In exceptional cases these terms may be extended with the Central Reserve Bank of Peru's prior authorization. The document or guaranty referred to in the previous paragraph shall be automatically executed upon expiry of its term.

#### 11.6 Procedure to Handle Remittances

Delivery to the Central Reserve Bank of Peru of the foreign currency corresponding to the F.O.B. Peruvian export port value of the export sales which the Contractor carries out under the Contract shall be made in one (1) or in the two (2) accounts named "Special Account No. 1" and "Special Account No. 2", as may be appropriate, which the Central Reserve Bank of Peru shall open in one (1) or more foreign banks chosen by agreement with the Contractor, in accord with the following:

- a) From each export the Contractor shall deposit in "Special Account No. 1" the amount of the foreign remittances to be made, which are included in his "Annual Projection of Foreign Currency Needs and Availabilities".
- b) The Contractor shall deposit in "Special Account No. 2" all of the foreign currency resulting from each export in excess of the amount deposited in "Special Account No. 1".

Via cable from the correspondent bank the Central Reserve Bank of Peru shall be immediately advised of every deposit made in each "Special Account". Furthermore, the Contractor shall advise the Central Reserve Bank of Peru against which export policies he is making such deposits, attaching a copy of the bill of lading and commercial invoice corresponding to each shipment.

The Contractor shall advise the Central Reserve Bank of Peru the remittance purpose or purposes for which he has made the deposits in "Special Account No. 1". Such information shall also be made available to the National Tax Administration Superintendency.

For purposes of the Contractor using the funds deposited in "Special Account No. 1" the Central Reserve Bank of Peru, at the time it sets it up, shall give the correspondent bank appropriate irrevocable instructions that the Contractor exclusively, shall be entitled to draw on such account at will.



The Central Reserve Bank of Peru, upon receiving cabled notice of the Deposits made in "Special Account No. 2" shall, in exchange, give the Contractor nominative Foreign Currency Certificates negotiable by endorsement to be charged against the respective deposits, in keeping with the provisions of Exchange Resolution No. 001-81-EFC/90 and its amendments.

11.7 Annual Projection of Foreign Currency Needs and Availability to Cover Remittances

- a) To order to remit foreign currency abroad for the reasons permitted by this clause the Contractor shall submit to the Central Reserve Bank of Peru, no less than sixty (60) Days in advance of the beginning of each subsequent calendar Year, an "Annual Projection of its Foreign Currency Needs and Availabilities" in monthly amounts for the respective calendar Year and shall, at that same time, deliver a copy to PETROPERU. The Central Reserve Bank of Peru shall immediately submit said projection for approval by the General Hydrocarbons Bureau and by the National Tax Administration Superintendency.

Within fifteen (15) Days after receipt of the projection the Central Reserve Bank of Peru, the General Hydrocarbons Bureau, and PETROPERU shall supply the National Tax Administration Superintendency with the technical data needed to prepare its report.

To this end, and from time to time, the National Tax Administration Superintendency, the Central Reserve Bank of Peru, the General Hydrocarbons Bureau, and PETROPERU must agree on the technical data which will be required for this purpose.

The General Hydrocarbons Bureau and the National Tax Administration Superintendency must produce their reports within fifty (50) Days after receipt of the projection. On receipt of the aforementioned state agency reports or upon expiry of the aforementioned period of fifty (50) Days, the Central Reserve Bank of Peru shall deliver the corresponding foreign exchange in accord with the projection, in the manner indicated in the previous item.

Should the General Hydrocarbons Bureau and/or the National Tax Administration Superintendency have offered some objection (to a projection) before or after expiry of the aforementioned term, such objection shall be reported to the Central Reserve Bank of Peru, which shall in turn notify the Contractor and suspend the delivery of foreign currency to the Contractor for such purpose or purposes but only up to the amount in controversy. The Contractor shall be able to request reconsideration of the objection or, if appropriate, appeal to the Ministry of which the agency making the objection is a part. For all administrative procedure purposes, said objection shall be considered as the first administrative resolution.

If, as a consequence of one or more objections to the projection raised in the course of the projection year, it happens that the amount of the remittances already made exceeds the uncontroverted amount of the projection, and if the reconsideration or appeal of the aforementioned objections has been unfavorable to the Contractor, the Contractor shall have a period of not more than ninety (90) Business Days, from the moment the aforementioned claims are adjudicated, to correct the situation by delivering to the Central Reserve Bank of Peru, through a deposit in "Special Account No. 2", the excess of foreign currency remitted. Such excess would be determined by the difference between the amounts remitted and the amount of the objected to or updated projection, at the expiry of the aforementioned term.

Should the aforementioned term exceed the end of the respective calendar Year, that is, December 31 of that year, the deposit must necessarily be made upon expiry of the aforementioned term or within the first fifteen (15) Business Days of the next Year, whichever comes first.

The aforementioned state agencies shall have a term of fifteen (15) Business Days to decide on reconsideration or appeal documents submitted. Should the term expire without the state agencies having produced their respective decisions, it shall be taken that the appeal made by the Contractor has been denied.

The Regulations of the General Rules of Administrative Procedures shall apply for all purposes.

- b) For the first calendar Year of commercial production the Contractor shall submit to the Central Reserve Bank of Peru, at least six (6) Months in advance of the estimated Starting Date for Commercial Production the "Projection of its Foreign Currency Needs and Availabilities" in monthly amounts for said Calendar year.

11.8 Updating of the Projection

The Contractor may update his projection monthly, notifying the Central Reserve Bank of Peru before the tenth (10) Day of each calendar Month, or may make a final confirmation or an adjustment of the projection already submitted for a remittance calendar Month or make a confirmation or adjustment of that part of the projection referring to the subsequent calendar Months.

As regards the updated projections the Parties shall also proceed in accord with, and in the manner provided in paragraph a) of item 11.7, except that the periods to supply the technical data and produce the reports shall be five (5) and ten (10) Business Days, respectively.

11.9 Verification of Rights and Remittances Made

Taking into account the results shown by financial statements, the Contractor shall attach to the sworn income tax statement which he

submits every year to the Tax Administration, an attachment with the information listed below:

- a) The total amount invested or reinvested by the Contractor as referred to in paragraph a) of item 11.2;
- b) The cumulative amount of the depreciation or amortization of the investment or reinvestments referred to in paragraph a), above;
- c) The balance remaining to be depreciated or amortized (difference between the amounts of paragraphs a) and b), above);
- d) Amount of that Year's profit available to the Contractor's head office, referred to in paragraph b) of item 11.2;
- e) The amount for that Year of the justified services provided for in paragraph c) of item 11.2;
- f) The amount for that Year of the loans from third parties or from Affiliates provided for in paragraph d) of item 11.2;
- g) Amounts remitted during the Year for the purposes referred to in paragraphs b), d), e) and f), above;
- h) Balances with a remittance right for the purposes referred to in paragraphs c), d), e) and f), above; and,

- i) "Special Account No. 1"'s turnover during the Year.

The National Tax Administration Superintendency shall advise the Central Reserve Bank of Peru whether the rights are in keeping with item 11.2's provisions for the remittances made.

Such report shall be issued and delivered within the six (6) Months following receipt of the Contractor's financial statements and shall reflect the status of the purposes for which remittances were made for that year.

Based on the National Tax Administration Superintendency's report the Central Reserve Bank of Peru shall notify the Contractor the Day after receiving it, attaching the resulting report, so that in not more than fifteen (15) Business Days from the date of the notice, the adjustments and payments in excess, fines and deposits to which the following paragraphs refer, may be made:

- 1) Excessive Deposits

If, based on the National Tax Administration Superintendency's report on the financial statements which the Contractor submits in keeping with the sworn income tax statement, it happened that in the course of the respective calendar Year the total deposits made in "Special Account No. 1" in accordance with items 11.5, 11.6 and 11.10, have exceeded the sum of the figures appearing in the aforementioned report for the four (4) purposes referred

to in item 11.2, the Contractor shall deliver the excess of foreign currency remitted to the Central Reserve Bank of Peru, making a cash deposit in "Special Account No. 2", within the term provided in the previous paragraph. Additionally, and within that same term, the Contractor shall pay the Dollar fines, specified below, directly to the Central Reserve Bank of Peru:

- a) When the cumulative difference between the total deposits made for all purposes and the figure given in the National Tax Administration Superintendency's report does not exceed ten (10) percent of the total sum of the remittances to which it has a right, the Contractor shall be subject to paying a fine calculated on the basis of a rate equal to the prime rate charged on loans made by the New York commercial bank with the largest assets.
- b) When the difference exceeds the aforementioned ten (10) percent, the fine shall be calculated applying double the interest rate provided in paragraph a) above.

The corresponding fine, as the case may be, shall apply to that difference and for the period between the date on which the excess occurred and the date on which the Contractor pays such excess.

2) Insufficient Deposits Made

If on the contrary, according to the National Tax Administration Superintendency's report on the Contractor's financial statements, it happens that in complying with items 11.5, 11.6 and 11.10, amounts less than those permitted have been deposited in the case of one or more purposes or their sum total, the Contractor may request the Central Reserve Bank of Peru's authorization to implement an appropriate correction, until the shortfall determined by the National Tax Administration Superintendency has been overcome. The Central Reserve Bank of Peru shall authorize the deposits on the basis of the aforementioned report by the National Tax Administration Superintendency within the aforementioned term of fifteen (15) Business Days.

The Contractor may propose reconsideration of the National Tax Administration Superintendency's report or, as the case may be, appeal to the Minister of Economy and Finance. For all administrative purposes the report shall be considered as the first administrative resolution.

Filing any of the aforementioned appeals shall not suspend the implementation of the contested action, but the National Tax Administration Superintendency may ex-officio, or at the Contractor's request, suspend implementation of the contested resolution, if there are cogent reasons for doing so. The



Regulations for the General Rules of Administrative Procedures shall apply in all of these cases.

If in any of the cases contemplated in the present clause the Central Reserve Bank of Peru suspends delivery of foreign currency under the "Annual Projection of Foreign Currency Needs and Availabilities" or any of its monthly readjustments or of any amount which has been the subject of an objection by the General Hydrocarbons Bureau or the National Tax Administration Superintendency, the Contractor may deposit in the Central Reserve Bank of Peru the local currency equivalent of the suspended remittance while the reconsideration or appeal are being decided.

To the extent that said appeals are resolved in the Contractor's favor the Central Reserve Bank of Peru shall sell the Contractor the foreign currency for the amount suspended due to the objection, at the exchange rate in force on the date the deposit was made.

If subsequently the decision which resolves such a controversy or the National Tax Administration Superintendency's report on the Contractor's financial statements determine that the remittances subjected to suspension or to an objection referred to in the two previous paragraphs could have been made, the Contractor shall receive interest in Dollars from the Central

Reserve Bank of Peru calculated on the requested remittance, applying the thirty (30) Day certificate of deposit rate used by the New York commercial bank with the largest assets for the period of time said local currency was deposited in the Central Reserve Bank of Peru.

Should the aforementioned reconsideration requests or appeals be resolved against the Contractor, the Central Reserve Bank of Peru, at the Contractor's request, shall keep such local currency deposit until the National Tax Administration Superintendency's report on the Contractor financial statements is finally issued. Should such report decide that the remittances could have been made the Contractor, in addition to requesting that the remittance be treated in the manner provided in the paragraph preceding the one above, shall receive from the Central Reserve Bank of Peru the Dollar interest referred to in the previous paragraph. Furthermore, should said report indicate that the remittance should not be made, the Central Reserve Bank of Peru shall return to the Contractor the local currency it had received for that conversion.

11.10 Handling Remittances with Local Currency Deliveries

If the F.O.B. Peruvian export port value of the Contractor's exports are insufficient to cover his foreign remittances for the purposes covered in item 11.2, in keeping with the respective "Annual Projection of Foreign Currency Needs and Availabilities", provided the

Contractor delivers to the Central Reserve Bank of Peru the equivalent in local currency resulting from his sales and Operations in the country, and after prior checking by the Central Reserve Bank of Peru, said bank binds itself to deposit the amount of foreign currency needed to cover such remittances, in Dollars, in "Special Account No. 1".

If five (5) Business Days have elapsed since the Contractor delivered the local currency amounts to the Central Reserve Bank of Peru to make the remittances, the foreign currency has not been received in the aforementioned account, the Contractor shall report this fact to the Central Reserve Bank of Peru and to PETROPERU.

In the event the Central Reserve Bank of Peru does not have the foreign currency needed to cover the remittances the procedure provided in item 11.11 shall be followed, provided the Contractor has delivered the equivalent value in local currency to the Central Reserve Bank of Peru.

11.11 Guaranty of Hydrocarbons Availability

Should the Central Reserve Bank of Peru give notice that it foresees it shall not be able to make available the amount of foreign currency requested by the Contractor to cover foreign remittances, or should the Contractor, pursuant to item 11.10, send notice that it has not received the foreign currency to cover the remittances, PETROPERU must use one or several of the following alternatives in order to supply

such foreign currency to the Contractor, up to fully covering the whole of the national currency deposited in the Central Reserve Bank of Peru, by the dates the remittances are due:

- a) Deliver to the Contractor at a Peruvian port of export a quantity of Liquid Hydrocarbons whose F.O.B. Dollar value, determined in accord with item 8.10.2's provisions, is equal to the amount in Dollars which should have deposited by the Central Reserve Bank of Peru in "Special Account No. 1", plus the interest provided for in this item.

The Contractor shall sell the Liquid Hydrocarbons received and the proceeds of such export sale shall serve to cover all the Contractor's remittances which could not be handled by the Central Reserve Bank of Peru, plus the respective interest.

The aforementioned Liquid Hydrocarbons' export sales shall have to be made in the manner established in the present clause's other items and, as regards said exports and their proceeds, the Contractor shall proceed in the manner stipulated in this clause. Any resulting surplus shall be handled in accord with paragraph b), below.

- b) Put at the Contractor's disposal, at a Peruvian port of export an amount of Liquid Hydrocarbons whose F.O.B Dollar value, determined as provided in sub-item 8.10.2, is equal to the

amount in Dollars which the Central Reserve Bank of Peru should have deposited in "Special Account No. 1", plus the interest set out in this item, with irrevocable instructions to the Contractor to handle the export as an agent for PETROPERU and for PETROPERU'S risk and account, which export shall have to be paid in cash.

The irrevocable instructions must also provide that the export proceeds be deposited in "Special Account No. 1", in whole or in part, to the extent necessary to cover those of the Contractor's remittances which were not made by the Central Reserve Bank of Peru, plus the respective interest. Any surplus shall be delivered by the Contractor to the Central Reserve Bank of Peru on the same date the deposit is made in "Special Account No. 1", and the Central Reserve Bank of Peru shall issue Foreign Currency Certificates in favor of PETROPERU for the amount of said surplus.

- c) Deliver to the Contractor, duly endorsed, the export shipment documents for Liquid Hydrocarbons exports which PETROPERU has made, with irrevocable instructions that the proceeds of such exports be delivered to the Central Reserve Bank of Peru by depositing them, in whole or in part, in "Special Account No. 1", to the extent necessary to cover the Contractor's remittances which were not processed by the Central Reserve Bank of Peru, plus the respective interest.

Any surplus shall be delivered by the Contractor to the Central Reserve Bank of Peru on the same date the deposit is made in "Special Account No. 1", and the Central Reserve Bank of Peru shall issue Foreign Currency Certificates in favor of PETROPERU for the amount of said surplus.

Deliveries of, and the placing at Contractor's disposal Liquid Hydrocarbons by PETROPERU as well as the deliveries of shipping documents which PETROPERU must carry out in keeping with paragraphs a), b) and c), above, shall be limited to a volume of Liquid Hydrocarbons whose export value shall be no greater than the amount of exportable Liquid Hydrocarbons from the Contract Area. The exportable amount of Liquid Hydrocarbons shall be determined pursuant to the second paragraph of item 8.13.

The Central Reserve Bank of Peru shall place at PETROPERU's disposal the amount of local currency which PETROPERU, in accord with the legal provisions in effect, would have received if it had immediately negotiated the Export Certificates issued in its favor, if this had been an export whose proceeds had not been the subject of the guaranty described in this item.

The Contractor shall advise the Central Reserve Bank of Peru of the purposes for which he has made the foreign remittances deposited to "Special Account No. 1".

The Liquid Hydrocarbons which the Contractor receives pursuant to this item are additional to, independent of, and do not affect the compensation to which the Contractor is entitled under clause eight.

Deliveries of Liquid Hydrocarbons to be exported by the Contractor, referred to in paragraphs a) and b), above, shall start being made on the second Business Day following that on which PETROPERU receives the Contractor's notice he is making use of the right provided by the present item, and must be completed within the following thirty (30) Days. The deliveries by PETROPERU to which paragraph c), above, refers, must also be made within these time limits.

The Parties specially recognize that if Contractor is exporting liquified Natural Gas received as compensation pursuant to clause eight, PETROPERU's obligation to deliver Liquid Hydrocarbons under the present item may be discharged by delivering liquified Natural Gas, whose value shall be determined pursuant to the respective sales contract for liquified Natural Gas.

The interest referred to in the present item shall be calculated at the thirty (30) Days rate for the loans it grants, used by New York's commercial bank with the largest assets for the period from the date for the remittance against which the Contractor must deposit the local currency in the Central Reserve Bank of Peru to the date of delivery or when PETROPERU places the Liquid Hydrocarbons at Contractor's disposal, should the options described in paragraphs a) and b) be

used, or until the pertinent funds are actually deposited in "Special Account No. 1", in the case described in paragraph c).

11.12 Investment Register

As provided by item 8.2 of the Bases approved by Decree Law No. 22774, the Contractor must register with the Central Reserve Bank of Peru the amount of the investments and re-investments he makes every calendar Year in Peru stating, in each case, whether they are being made with capital goods or otherwise.

The investments referred to in the previous paragraph include those made with its own resources as well as those made with loans from Affiliates, up to the Starting Date of Commercial Production.

The loans from Affiliates made after the Starting Date of Commercial Production, as well as the loans from third parties, shall be registered with the Central Reserve Bank of Peru as loans and not as investments.

The aforementioned foreign currency amounts which the Contractor invests in his Operations in the country and which enter the country in cash and are so registered, must be delivered to the Central Reserve Bank of Peru for conversion into local currency. Registration of investments made in goods or services purchased abroad and brought to the country shall be carried out by presenting the pertinent documentation to the Central Reserve Bank of Peru.



11.13 Availability for Imports

After the Starting Date of Commercial Production of Hydrocarbons, the Central Reserve Bank of Peru - bearing in mind the nature of the oil activity shall give the Contractor priority in the availability of foreign currency to make his imports, provided such imports are contemplated in an annual projection of foreign currency needs, approved by the General Hydrocarbons Bureau. The procedure described in items 11.7 and 11.8 shall apply to those foreign remittances which the Contractor might make.

The Contractor, for purposes of paying for his imports from abroad, shall make use of his foreign currency certificates or, if he does not have any, he shall deliver to the Central Reserve Bank of Peru the amounts in local currency resulting from his sales and Operations in the country, after the Central Reserve Bank of Peru has verified the origin of such funds.

11.14 Contractor's Foreign Currency Accounts

The Contractor shall have one or more foreign currency accounts in foreign banks, registered with the Central Reserve Bank of Peru, which shall be used to channel the flow of resources to the nation.

The deposits in foreign currency to be used to make the remittances or the payments related to the Operations under the Contract, may be made in said account.

Furthermore, with prior authorization by the Central Reserve Bank of Peru, the Contractor may keep one or more foreign currency accounts in the nation's banks. In these accounts the Contractor shall be able to deposit funds originating from his own resources or from loans by Affiliates or third parties. Such funds need not be registered with the Central Reserve Bank of Peru as long as they have not been delivered to the Central Reserve Bank of Peru for conversion into local currency or applied to the procurement of goods or services abroad. Such deliveries, or the goods or services purchased, are the ones which shall be registered. Such funds if not used for the aforementioned purposes, may be remitted back abroad without further action under the present clause.

11.15 Exchange Rates

a) Applicable Exchange Rate

For all of the Contract's effects and pursuant to Exchange Resolution No. 015-89-EF/90, the exchange rate applicable to foreign currency operations or operations related to such currency, except as provided in this item's paragraph c), shall be the supply and demand exchange rate referred to in the aforementioned Exchange Resolution. It is noted that should the Official Newspaper "El Peruano" not publish the exchange rate referred to above, the rate established by the Banking and Insurance Superintendency for that date shall apply and, should both be missing, the last one published by the Banking and

Insurance Superintendency shall apply as of the Day immediately prior to the operation.

If for any reason the aforementioned supply and demand exchange rate is substituted or replaced, the exchange rate substituting for or replacing it, shall apply. If it were to disappear or be eliminated, with no substitution or replacement rate, an exchange rate will be applied which will make it possible to obtain an economic effect similar to the one which would have been obtained if the supply and demand exchange rate had continued in effect.

b) Scope

The exchange rates referred to in the item above shall be applicable to all the operations which the Contractor may carry out related to the conversion, purchase, sale, registration and others of foreign currency to local currency, and vice versa, including, but not being limited to, the following:

- i) The conversion into local currency of the foreign currency entering the country as a capital contribution, whether it be made in cash or kind.
- ii) The conversion into local currency of the foreign currency coming from foreign loan credit disbursements, whether they be made in cash or by imports of goods or services.

- iii) The conversion into local currency of the foreign currency credited to "Special Account No. 2" and represented by Foreign Currency Certificates.
  - iv) The sale of foreign currency to make foreign remittances for the purposes set out in item 11.1, that is, depreciation, profits, justified services and loan amortizations and interest.
  - v) The sale of foreign currency to cover the payment of the C&F value of the imports referred to in item 11.13.
  - vi) Payment for the purchases and Operations the Contractor carries out in the country.
  - vii) Local payment of the Contractor's obligations denominated in Dollars, provided they are directly related to the Contract's Operations.
  - viii) Conversion of debts and credits, as well as payments made in local currency, into foreign currency for purpose of foreign currency accounting records.
- c) Unified Exchange Rate
- Notwithstanding the provisions of this item's paragraph a) should an official unified exchange rate, of equal value for all

foreign currency or foreign currency-linked transactions, apply in the country, the exchange rate to be used under the Contract shall be that unified exchange rate from the date it is published.

If subsequently that unified exchange rate is replaced by two or more exchange rates, or should different values apply for the aforementioned exchange rate, the exchange rates referred to in paragraph a) of the present item shall be used as needed under the Contract.

11.16 Prohibition on Use of Local Sources of Financing for Loans

The Contractor binds himself not to use local sources of financing for loans, nor to enter into contracts abroad for Peruvian currency to be brought into the country.

Should the Contractor request avals or guaranties from local financial institutions, such avals or guaranties shall be counterguaranteed by a first class foreign bank.

11.17 After the administrative process in any matter related to this clause's application has been exhausted, in order for the Contractor to initiate any further appeal proceeding it shall be necessary, except if the law in effect provides otherwise, for him to either pay or deposit in foreign currency in Banco de la Nacion, the sum subject

to dispute. The court decision will determine to whom the accrued interest will be paid.

CLAUSE TWELVE - MAIN PIPELINE AND TRANSPORTATION AND STORAGE SYSTEM

12.1 If, as a result of his Exploration in the Contract Area, the Contractor makes a declaration of Commercial Discovery, the Contractor binds himself, at his sole cost and risk and in accord with the approved "Initial Development and Main Pipeline Plan", to design, build, operate and maintain the Main Pipeline, up to a Production Fiscalization Point, as well as the Transportation and Storage System.

In those cases where a Main Pipeline is built because of discoveries made subsequent to the declaration of a Commercial Discovery in a given block, the Contractor shall comply with the obligation referred to in the previous paragraph in accord with what PETROPERU approves on the basis of the annual work programs, as is provided in item 5.4.

12.2 The Contractor binds himself to start construction of the Main Pipeline within the term agreed upon in the "Initial Development and Main Pipeline Plan".

The start of construction of Main Pipelines which may be built in a given block due to discoveries made subsequent to the declaration of Commercial Discovery shall occur at the time, and in the way, provided in the annual work programs approved by PETROPERU.

Construction of a Main Pipeline shall be deemed to start when the Contractor notifies PETROPERU that it has initiated the work necessary to lay out its route.

- 12.3 During the Term of the Contract the Contractor shall properly and continuously operate and maintain both the Main Pipeline and the Transportation and Storage System to implement the permanent transportation of the Hydrocarbons produced by the Contractor from the Contract Area to some Production Fiscalization Point, at no cost nor risk whatsoever to PETROPERU.

The Contractor shall deliver the Hydrocarbons to PETROPERU at a Production Fiscalization Point, in the conditions and with the specifications provided in item 5.11.

- 12.4 The contracts related to the construction of both the Main Pipeline as well as the Transportation and Storage System which the Contractor might sign with his Subcontractors or Affiliates shall be submitted to PETROPERU for its formal approval. Notwithstanding this, the contracts shall be taken as approved if PETROPERU, within the thirty (30) Days following the date they were submitted to it for its consideration, has not formulated any objection in writing.

- 12.5 The Main Pipeline shall be designed taking into account a transportation capacity at least equivalent to the estimated maximum production of the Field or Fields for whose service it has been

designed. If PETROPERU requests that the Main Pipeline be of a capacity larger than that required to transport such estimated production, PETROPERU shall pay for all additional costs incurred for such larger capacity, unless the Parties agree on some other form of compensation.

- 12.6 The Contractor may comply with his commitment to build the Main Pipeline by joining up with other contractor companies which have made commercial discoveries in other areas and provided the related contract is approved by PETROPERU. In any case, PETROPERU may request him to negotiate with such contractors concerning the possibility of sharing the obligation of building the Main Pipeline, as well as a preferential right for transportation of PETROPERU's Hydrocarbons produced from such areas.

Hydrocarbons from the Contract Area which are the property of PETROPERU shall always be given preference in transportation.

- 12.7 At the end of the Term of the Contract PETROPERU shall acquire ownership of the Main Pipeline and the Transportation and Storage System as well as related facilities, at no cost whatsoever. The criteria mentioned in item 24.4 shall similarly apply here.
- 12.8 Should PETROPERU choose to associate with the Contractor as per the provisions of clauses four and twenty-three, the agreement which may



be reached at that time shall set out PETROPERU's rights and duties concerning the Main Pipeline and related facilities.

- 12.9 The Contractor is obliged to train and teach personnel which PETROPERU may designate for purpose of having the necessary human resources for the total independent operation and adequate maintenance of the Main Pipeline at any moment and for the time that may be necessary.
- 12.10 Should it be agreed that the Main Pipeline be connected to the North Peruvian Pipeline or to any other line owned by PETROPERU, the Contractor's obligation to design and build the Main Pipeline, by prior agreement between the Parties shall include, if necessary, the investments required to increase the capacity of the North Peruvian Pipeline or of any other pipelines or segment of pipeline and of the installations to measure the Hydrocarbons coming from the Contract Area. These investments shall be included as Contractor investments only for purposes of calculating the "R" factor.
- 12.11 The Contractor is obliged to keep available at all times sufficient competent staff, materials and equipment to assure the proper operation and functioning of the Main Pipeline and Transportation and Storage System installations.
- 12.12 a) A tariff in Dollars per barrel transported, which shall be included as an expense for purposes of the "R" factor, shall be charged for transportation of the Fiscalized Liquid Hydrocarbons

owned by the Contractor through the North Peruvian Pipeline or through any other pipeline wholly or partly owned by PETROPERU. This tariff per barrel transported shall be determined by using the following formula:

$$\text{Tariff} = \text{Costs} + \text{Profit Margin (M.U.)}$$

Where:

**Tariff :** Tariff for the transport of Fiscalized Liquid Hydrocarbons in the North Peruvian Pipeline or through any other pipeline wholly or partly owned by PETROPERU. To be charged per Contractor barrel transported.

**Costs :** These include the cost of operating the pipeline segment to which the tariff applies; the depreciation of the investments made by PETROPERU in the pipeline segments to which the tariff applies; and the financial costs allocated to the segments of North Peruvian Pipeline used. It is agreed that the depreciation period shall be twenty (20) years to run from the time the pipeline sections come into use. For new investments in the pipeline the depreciation period shall run from the Year in which

they were made. To this end the investments shall be calculated at their historic cost.

All the costs shall be converted into Dollars at the exchange rate of the date they were incurred.

Profit : The profit margin shall be determined in accord with  
Margin the following formula and notes:  
(M.U.)

$$MU = [(PR + 3) \times I] \times F$$

Where :

PR + 3 : "Prime Rate" (PR) prime interest rate of the Chase Manhattan Bank, N.A., New York, New York, in effect at that time plus three (3) percentage points but with a total resulting percentage no lower than seven (7) and no higher than fifteen (15).

I : Investments made by PETROPERU in the pipeline segment subject to the tariff, at their historical value, up to the date the formula is applied converted into Dollars at the exchange rate of the date in which they were made and without any reduction for amortization or depreciation.

F : Escalation factor which shall be determined by applying the following formula:

$$F = 1 + \frac{(P - 20)}{20} \times E$$

Where:

20 : Base price of twenty Dollars (\$20.00) per Barrel.

P : Weighted average of that Month's F.O.B. prices per Barrel of the different Hydrocarbons, to whose transportation the tariff shall be applied during the period of the calculation.

E : Percentage in accord with the following table:

When P is:

- More than twenty Dollars (\$20.00) to thirty Dollars (\$30.00), inclusive: 0.775
- More than thirty Dollars (\$30.00) to thirty-five Dollars (\$35.00), inclusive: 0.725
- More than thirty-five Dollars (\$35.00): 0.700

Note 1: the F factor shall be 1 when P is twenty Dollars (\$20.00) or less per barrel.

Note 2: it is agreed that, exceptionally, the F factor resulting from this formula's application shall be adjusted so that:

- 1) When P is more than twenty Dollars (\$20.00) to thirty Dollars (\$30.00), inclusive, the F factor shall not be greater than one point three hundred and seventy-five (1.375);
- 2) When P is more than thirty Dollars (\$30.00) to thirty-five Dollars (\$35.00), inclusive, the F factor shall not be less than one point three hundred and seventy-five (1.375), nor higher than one point five hundred and forty-four (1.544); and,
- 3) When P is more than thirty-five Dollars (\$35.00), the F factor shall not be less than one point five hundred and forty-four (1.544)

- b) The tariffs referred to in the present item shall be calculated on the total volume of Hydrocarbons transported through the

segment of pipeline to which the tariff applies, irrespective of its ownership.

- c) Should PETROPERU choose to take a participation in the Main Pipeline, pursuant to item 23.1, the tariff to be charged the Contractor per barrel transported from the Contract Area, shall be made up of the elements described in the paragraph above, but excluding operating costs, which shall be for Contractor's exclusive charge and account.
- d) The tariffs do not include the Contractor's use of port storage and loading facilities owned by PETROPERU. Should the Contractor use said facilities the corresponding tariff shall be determined in accord with the rules above set out, but the profit margin shall not include an escalation factor as a function of the increase in Hydrocarbon prices.
- e) To determine the fee for the gas pipelines partly or wholly owned by PETROPERU, the same formulas and rules described in paragraph a) above, shall apply, with the following changes:
  - 1) The base price shall be the Natural Gas sales price appearing in the contract for the initial delivery of said Natural Gas.
  - 2) The volume units to be used shall be those which turn out to be appropriate given the sale terms for Natural Gas.

- 3) The following P's shall be used in the table included to determine the E element:
  - More than the base price to one hundred and fifty percent (150%) of said base price;
  - More than one hundred and fifty percent (150%) of the base price to one hundred and seventy-five percent (175%) of said base price; and,
  - More than one hundred and seventy-five percent (175%) of the base price.
- 4) The base price indicated in number 1), above, shall replace the twenty Dollars (\$20.00) in the formula's Note 1.
- 5) The values resulting from number 3), above, shall replace the respective values for purposes of what is set out in the formula's Note 2.
- f) The tariffs referred to in the present item shall be included as an expense for purposes of calculating the "R" factor.
- g) To verify the different elements of the formulas referred to in the present item, the Contractor shall have the right to request PETROPERU, in writing, for authorization to review the pertinent sections of PETROPERU's accounting books.

- h) Tariffs shall be calculated and stated in Dollars but paid in local currency within the thirty (30) Days following the date of presentation of the monthly invoice for the previous calendar month's transportation.
- i) Tariff shall be determined annually before the calendar year in which the transportation shall occur or the facilities shall be used, based on a reasonable estimate of the aforementioned elements which compose it. At the end of such calendar year appropriate adjustments shall be made by using the actual figures for said elements for that calendar year.

CLAUSE THIRTEEN - WORKERS

13.1 The Contractor shall hire Peruvian staff (white and blue collar workers, technical-administrative staff) in the proportion provided by law. The number of workers, their selection, working schedules and salaries shall be left to the Contractors judgement, in accord with the legislation in force.

The Contractor is responsible for paying his workers' social benefits in addition to any other benefits he might agree upon with them. The Contractor is also responsible for his Subcontractors' similar obligations. Said obligations may for no reason be transferred to PETROPERU.



Should the Contractor default on labor obligations he is liable for himself or on behalf of others, among them his Subcontractors, PETROPERU, after prior approval by and final order of the competent authority, shall have the right to withhold pending payments up to an amount sufficient to comply with said obligations.

Except for the basic difference in wages, salaries and benefits due to the level of the foreign labor market as compared to the Peruvian labor market and any additional compensation received by the workers hired abroad due to the fact that they have been brought from abroad to perform their service in the nation, and those compensations which the Peruvian staff might receive as a consequence of Peru's labor law system, the basic wages and salaries as well as the housing, recreational, food and other benefits for Contractor's Peruvian staff and families may not be less than those offered to the staff hired abroad of the same position, level and function in Peruvian territory. The hiring of foreign staff shall be governed by the provisions of Decree Law No. 22452 and its regulations, modifications and amendments.

- 13.2 The Contractor, in accord with the law, shall be authorized to bring to Peru technical, administrative and professional staff who he considers irreplaceable.

After duly documented verification submitted to PETROPERU that there is no local personnel with the necessary skills, the Contractor may

hire for his Operations in Peru qualified technical, administrative and professional staff other than the ones mentioned in the paragraph above who the Contractor, taking into account the provisions of item 13.1, deems necessary to carry out the Operations in a proper, skillful, economic and expeditious manner in accord with the legislation in effect.

- 13.3 At the Contractor's request, and to the extent possible, PETROPERU shall help him in applying for, and obtaining all the permits, visas, work authorizations and other similar requirements for the foreign personnel in the Contractor's service so that they may enter, work and stay in Peru, in keeping with the law, to carry out the Operations contemplated herein, as well as for the families of said workers desiring to accompany them and stay with them in the country. The Contractor shall reimburse PETROPERU for any costs incurred in obtaining such visas, authorizations, permits and other documentation.
- 13.4 During the first fifteen (15) Years from the Date of Signing of the Contract, the Contractor shall progressively replace his foreign staff residing in Peru with Peruvian staff, so that his staff be of Peruvian nationality or could so qualify, at the end of said period. Only the professional, administrative and technical personnel residing in Peru who the Contractor deems irreplaceable may continue to be of foreign nationality until the end of the Contract, in accord with legislation in effect. The Contractor shall train his national staff for the same

jobs and responsibilities assigned to the foreign staff, in accord with the legislation in effect.

- 13.5 The Contractor's local workers who are transferred by him to some Affiliate or some other corporation in Peru in whose share capital the Contractor has a share, shall retain the acquired social rights even if their social benefits were actually paid.

In these cases the Affiliate or the aforementioned corporation shall take over the labor responsibilities and other benefits accruing to the worker, in substitution for the Contractor. The time of service with the Contractor shall be added to the time of service with the Affiliate or corporation, deducting those benefits which have been previously paid. An agreement shall be entered into between the Contractor and the Affiliate or corporation in Peru to which the worker is transferred, which reflects what is provided in the present item, a copy of which shall be sent to the Ministry of Labor and Social promotion.

- 13.5.1 Should the Affiliate or corporation to which the worker is transferred default on the agreement, the Contractor shall be liable for the labor obligations and social benefits to which the transferred worker has a right.

- 13.5.2 The Contractor binds himself to supervising the Subcontractor's timely compliance with the labor legislation in force.

- 13.5.3 The Contractor binds himself not to subcontract personnel to work in the Operations unless it is just to cover his temporary needs and in accord with the provisions of article 32 of Law No. 24514.
- 13.6 The Contractor shall supply all of his personnel with the means that are necessary for them to do their work in conditions of safety for their lives and health in accord with Ministerial Resolution No. 0664-78-EM/DGH of October 3, 1978 and its amendments, and in compliance with all other legislation in effect. In any area not covered by Peruvian standards, those standards which the Contractor may establish after prior consultation with the General Hydrocarbons Bureau, shall apply for the benefit of the staff.
- 13.7 The Contractor, in addition to the standards provided by law, shall adopt at least the prevention and control of accident measures and guidelines which he shall establish after prior consultation with the General Hydrocarbons Bureau.
- 13.8 The Contractor shall keep his personnel insured with the Peruvian Social Security Institute or with whatever institution might replace it. Wherever health services are not found the Contractor shall provide them in quality similar to those rendered by the Peruvian Social Security Institute or any institution which might replace it; or shall transport the personnel who require such services to the

closest assistance center of any Peruvian Social Security Institute or of any institution which replaces it.

For those cases where the use of highly specialized medical professionals and equipment is required, the Contractor shall adopt an insurance program covering such cases' needs if they are not covered by the Peruvian Social Security Institute.

PETROPERU is empowered to carry out health and industrial safety inspections and may recommend actions to be implemented or adopted.

13.9 If, because of the Operations, Contractor's personnel are required to reside away from villages or cities, the Contractor shall furnish them with comfortable housing, recreation and food.

13.10 The Contractor may hire the services of Subcontractors. In subcontracting the Contractor must give preference to national companies, provided the national Subcontractors are available at the time the services are required and provided that, in the Contractor's opinion, in terms of quality, price and suitability, they are equivalent to the foreign ones.

In his contracts with the Subcontractors the Contractor must include the provisions contained in items 6.4, 13.1, 13.2, 13.4, 13.5, 13.6, 13.7, 13.8, 13.9, 13.11 and in clause fourteen.

- 13.11 Pursuant to article 2 of Legislative Decree No. 367, the Contractor guarantees to comply with his obligations concerning human and social rights for workers included in Peru's Political Constitution.
- 13.12 Contractor shall deliver to PETROPERU quarterly a list of the local and foreign personnel in its employ for Operations indicating the place of work, nationality, date of hiring, technical and professional qualifications and job they perform, as well as any changes in his organization chart.

CLAUSE FOURTEEN - PROTECTION OF THE ENVIRONMENT AND OF NATIVE COMMUNITIES

- 14.1 The parties recognize that due to their nature, the Operations will cause effects on the zone's ecological balance and cause some pollution of the environment.

In implementing the present Contract the Contractor shall adopt all the necessary measures to avoid or minimize pollution of the soil, air or water and that his actions not be detrimental to human beings' lives or health or to animal and vegetable life and, in general, to try to avoid anything which could harm the environment.

In those cases where the pollution cannot be avoided, necessary measures to minimize its effects shall be undertaken.

The measures and methods which the Contractor might use to this end shall be reviewed and approved by the Supervisory Committee which, in

doing so, must consider international standards applicable to similar circumstances and the respective "Environmental Impact Study" prepared pursuant to item 14.4, below. Said methods and measures shall be reported to PETROPERU and to the General Hydrocarbons Bureau.

- 14.2 In implementing Operations the Contractor is exclusively responsible for using adequate technical means approved by the General Hydrocarbons Bureau to avoid or minimize pollution. Wherever the Contractor has been unable, or if it has been impossible, to avoid pollution the Contractor shall be responsible for cleaning it up or for taking measures which may be necessary to minimize its effects and, to the extent possible, to restore what has been contaminated.
- 14.3 Contractor shall be responsible for the damages to PETROPERU or to third parties resulting from environmental pollution in accord with the law.
- 14.4 The Parties agree that specialists shall be hired for purposes of preparing two "Environmental Impact Studies" whose purpose shall be:
- a) To determine the present status of the environment and of the native communities in the areas involved.
  - b) To determine the present level of pollution, if any.

- c) To establish what could be the environmental impact of implementing different kinds of Operations under the Contract.

Due to time limitations the first of the studies shall be carried out in two parts, a preliminary one which must be ready before the start of the field work to shoot the seismic lines and a subsequent part applicable to all of the exploration phase. The second study must be completed before starting the Development pursuant to item 4.19.

- 14.5 The studies mentioned in the previous paragraph must include the proposed methods and measures to be used in, as well as the limits to be imposed on, to the extent applicable, the disposal, minimization or neutralization of residues, including, but without being limited to the following:

- Drilling muds, well completion or workover residues.
- Formation water.
- Mud, oily slag or waste; soil, vegetation, timber, absorbent materials and polluted water.
- Solvents and lubricating oils.
- Used filter cartridges contaminated with lubricants, glycols, waters, amines, sulfinol, etc.; dryers, such as silica gel, alumina silica, sodium-alumina silicate.
- Catalysts, dielectrics, sulfur and other hazardous or toxic products.
- Miscellaneous drainages and/or spills.



- Used drums, organic debris, garbage and waste materials from the work areas and the camps.

The study must also cover examination of the soils and existing vegetation to determine the best construction practices to be applied in every case to avoid erosion and allow rapid recovery of the affected vegetation.

14.6 The Contractor shall design and build its facilities in such manner as to minimize environmental pollution and, at a minimum, adopt the following measures in drilling areas and at well service equipment locations:

- A rainwater drainage system.
- A lubeoils drainage/recovery system (motors, pumps, reducers and others).
- A diesel oil drainage/recovery system.
- A spillage control and recovery system.
- A waste disposal system.

Additionally, in Natural Gas separator and/or treatment plant areas there shall also be a system to separate and dispose of formation waters.

14.7 Contractor shall keep a record of the disposal of the pollutants referred to in items 14.5 and 14.6 as well as of the results he

obtained including, at least, the following: name and characteristics of the pollutants, place where they were used or produced, disposal, transportation and/or storage method, date of the disposal operation and the name and signature of the supervisor in charge.

- 14.8 The Contractor and his Subcontractors shall adopt construction methods which allow those lands affected by construction processes and by the Contractor's Operations to recover their natural condition to the maximum extent and in the minimum time possible, after the end of their work.
- 14.9 In those areas belonging to, or being used by, the native populations; or in present and future protected ecological areas, the Contractor and his Subcontractors, and their personnel undertake not to practice nor to encourage hunting, fishing or the collection of flora and fauna for food, commercial, scientific or tourist purposes. They similarly undertake not to trade goods, free or for money, with those native populations with whom no contacts have been held before or with those with which only sporadic contacts are made.
- 14.10 The Contractor shall implement and carry out programs which will make it possible for his staff to develop an awareness of matters related to safety, health and the environment.
- 14.11 The Contractor states he knows the Contract Area includes part of the Biabo-Cordillera Azul National Forest, part of the Mariscal Caceres

National Forest and part of the Alto Mayo National Forest, all with the boundaries established by Supreme Resolution No. 442 of October 9, 1963.

In accord with the paragraph above and within said areas the Contractor and his Subcontractors, including their personnel, agree not to hunt, fish, nor collect flora or fauna, nor use chemical products nor construction materials other than those required for Operations, nor to exchange products with the natives of the region, free or by barter, nor to use the flora and fauna as food for their personnel.

14.12 In carrying out Operations it shall be the Contractor's exclusive responsibility to comply with existing legal provisions or those which might be enacted for protection of the environment. Should such provisions not exist, the measures and methods adopted pursuant to the present clause shall apply.

14.13 To the extent applicable, contracts for Operations entered into by Contractor and Subcontractors shall incorporate the present clause's provisions.

#### CLAUSE FIFTEEN - HYDROCARBONS CONSERVATION AND LOSS PREVENTION

15.1 The Contractor must adopt all reasonable measures to avoid Hydrocarbon losses or waste of any kind on the surface or underground during drilling, Production, gathering or transport by the Main Pipeline

The Contractor shall comply with any comment which the Supervisory Committee might make in this regard.

In case of a loss the Contractor shall immediately report the fact to PETROPERU indicating the estimated volume of the loss and the actions taken to correct its causes. PETROPERU has the right to verify the volume of the losses and analyze their cause.

In case of losses on the surface any volume lost due to the Contractor's proven negligence, less the compensation he would have received for such volume, shall be deducted from his compensation.

- 15.2 Once a producing well's drilling has been completed, Contractor must advise PETROPERU of the time when the well will be tested and, thereafter, he must notify PETROPERU of its estimated production rate.
- 15.3 The wells' daily records and graphs must show the amount and type of cement, drilling mud or completion fluid used, as well as the amount of any other material used in the well for purposes of facilitating overseeing conservation of the Reservoirs and safeguarding the Oil, Condensate, Heavy Crude, Natural Gas and fresh water on the ground and underground. Any significant change in the well equipment after its completion shall be subject to the Supervisory Committee's approval.

CLAUSE SIXTEEN - TRAINING AND TRANSFER OF TECHNOLOGY

16.1 Pursuant to item 5.10 of the Bases approved by Decree Law No. 22774, the Contractor binds himself to place the following amounts at PETROPERU's disposal every year; for the first time in the month of January, 1990 and subsequently on January of each calendar year during the Term of the Contract:

- Up to the Starting Date of Commercial Production: U.S. \$150,000 (one hundred and fifty thousand Dollars)
- From the Starting Date of Commercial Production until production equal to 100,000 Barrels/Day is reached: U.S. \$250,000 (two hundred and fifty thousand Dollars).
- From production equal to 100,001 Barrels/Day up to production equal to 150,000 Barrels/Day: U.S. \$350,000 (three hundred and fifty thousand Dollars).
- When production at least equal to 150,001 Barrels/Day is reached: U.S. \$450,000 (four hundred and fifty thousand Dollars).

The payments referred to in this item shall be made during the month of January of each calendar year, and be determined by the figure resulting from averaging the highest production levels reached during thirty (30) consecutive Days in the previous year.

To determine the Barrel/Day equivalent in the case of Natural Gas production, the following formula shall be used:

Barrels shall be equivalent to the volume of Natural Gas expressed in standard cubic feet divided by the factor 5,626.

- 16.2 Until the Starting Date of Commercial Production, the Contractor shall meet the obligations set out in item 16.1 by depositing Dollars in an account which PETROPERU shall designate.

During said period the Contractor, at PETROPERU's request made before the corresponding annual payment has been effected, may import training materials and equipment and may contract training services abroad, which shall be used in PETROPERU's training activities.

The costs for these goods and the services shall be deducted from the Contractor's annual contribution.

The Contractor's obligation shall be met at the time he makes payment for the purchase of the goods or for the training services contracted abroad, which have been required by PETROPERU.

After the Starting Date of Commercial Production, the Contractor shall make the payments referred to in this clause in Peru and in their local currency equivalent. In this case PETROPERU may change the date on which the Contractor's obligation must be paid for purposes of having it paid in installments in the course of the year.

- 16.3 From time to time PETROPERU and the Contractor shall agree on the best way to use the contributions provided in item 16.1. To prepare the annual programs PETROPERU shall make its needs for the next calendar year's program known to the Contractor.

PETROPERU and the Contractor shall prepare the program jointly but PETROPERU shall implement it.

- 16.4 The Contractor may use the services of PETROPERU's National Oil Training Center and its Research and Development Center. PETROPERU's prior approval shall be needed in this latter case. The Contractor shall pay the corresponding costs in both cases.

- 16.5 During the exploitation phase and, if possible, during the exploration phase, the Contractor binds himself to have a program for university students to do practical work so that they may complete their academic training in accord with their universities' requirements.

The choice of the individuals and their number shall be exclusively in Contractor's judgement. Contractor will require that whoever participates in such university practical work shall be bound by the Contractor's confidentiality restrictions.

- 16.6 Pursuant to article 40 of Peru's Political Constitution and article 1 of Legislative Decree No. 367 and for purposes of performing an effective transfer of technology to PETROPERU, the Contractor agrees

to allow a reasonable number of PETROPERU technicians and professionals to participate in specific work which involves the application of advanced techniques or innovations in petroleum technology or know-how.

To facilitate the aforementioned participation by PETROPERU's personnel, the Contractor shall send notice to PETROPERU each time work will be performed under this Contract in Peru, which involves application of advanced technology or innovations in the area of petroleum know-how so that PETROPERU may timely plan its personnels' participation, which shall be for PETROPERU's account, expense and risk.

Should the Contractor be doing some work abroad which involves advanced technology for this Contract, the Contractor shall notify PETROPERU and shall facilitate the participation of said company's personnel if PETROPERU deems it convenient, which participation shall be for PETROPERU's account, cost and risk.

The Contractor shall not be obliged to reveal to PETROPERU nor to program the participation of PETROPERU's personnel in any work which involves confidential information or proprietary data of the Contractor which is unrelated to the Contract, or which is subject to some confidentiality obligation to third parties.



Any confidential information or Contractor's proprietary data or its private information subject to a confidentiality obligation of third parties which comes to be known by PETROPERU due to provisions of the present Contract, may be used by PETROPERU for its exclusive benefit in the operations it carries out in Peru, as an exception to what is provided in item 6.6. In this regard the Contractor may request that those members of PETROPERU's staff who are to receive such data must previously sign the confidentiality agreements which the Contractor uses for his personnel.

- 16.7 The Contractor and PETROPERU shall agree upon the implementation of technical cooperation programs for research and development on subjects of mutual interest.

Within ninety (90) Days before the end of each calendar year, the Parties shall submit the projects to be implemented in the following calendar year to the Supervisory Committee.

- 16.8 The Contractor binds himself to establish training programs in Peru, and if necessary, abroad, for his personnel. PETROPERU shall be advised about such training programs.

#### CLAUSE SEVENTEEN - ASSIGNMENT

- 17.1 Should the Contractor receive an offer he is willing to accept for the acquisition by third party of all or part of the Contractor's interest in this Contract, in accord with this Contract's terms Contractor

shall immediately notify PETROPERU of the offer in writing. The notice must specify the name, address and give complementary data which will make it possible to determine the economic solvency, and financial and technical capacity of the offeror, the price offered and the proposal's terms and conditions. PETROPERU, within thirty (30) Days following receipt of the aforementioned notice shall have the preferential right to purchase the interest involved in said proposal for the same price and under the same terms and conditions specified in it.

Should PETROPERU not make use of the aforementioned preferential right within the term of thirty (30) Days, the Contractor may accept the proposal received, which must be approved by Supreme Decree.

The assignment must be carried out in Peru, subject to Peruvian laws.

- 17.2 In the case of an Affiliate, the Contractor shall have the right, after prior notice to PETROPERU and the corresponding authorization by the Executive Power, to transfer all or part of its interest in the Contract.
- 17.3 Should the Contractor make an assignment under this Contract, the assignee shall take over all of the assignor's guaranties, responsibilities and obligations.

17.4 The Contractor's rights and obligations under the Contract shall not be affected by PETROPERU's assigning this Contract. However, it is hereby expressly agreed that if PETROPERU were to participate in the Main Pipeline pursuant to item 23.1 or should it join in partnership with the Contractor pursuant to item 23.2 and thereafter receive from a company or a private enterprise an offer it would be willing to accept for such entity to purchase such interests, in whole or in part, the Contractor shall have the preferential right to purchase them by following a procedure similar to the one provided in item 17.1, except for the case of transfers to Affiliates.

17.5 If at any time the Contractor is comprised of two or more entities, each of them shall be jointly and severally responsible for all Contractor's obligations under the Contract.

Without prejudice to the foregoing stipulation, one of said entities shall be appointed as "Operator" for implementing Operations.

A copy of the operating agreement signed by "Operator" and the other entities comprising Contractor as well as any amendments shall be delivered to PETROPERU and to the General Hydrocarbons Bureau.

Notwithstanding all previous provisions of this item, it shall be deemed that each of the entities comprising the Contractor is neither jointly nor severally responsible for its liability under the tax system nor for the responsibilities deriving from it, nor as regards

the financial rights stipulated in clause eleven, which shall apply to them separately and proportionally.

Each of the entities which comprise the Contractor shall comply with the provisions regarding the transfer of interests as set out in this clause seventeen as well as with the rights and obligations under the Contract concerning the guaranty set out in item 3.7 and with respect to its books and accounting records listed in clause nineteen. The entity appointed as "Operator" shall keep a special system of accounts in which it shall record everything relating to the Operations.

Pursuant to clause eight, Contractor's obligation to supply the domestic market, shall be complied with proportionally by each of the aforementioned entities which, once having complied with said obligation shall be able to export separately that part of the compensation accruing to it. Sales for the domestic market under this Contract shall be carried out by each of the entities directly and independently with PETROPERU.

**CLAUSE EIGHTEEN - FORCE MAJEURE AND ACTS OF GOD**

- 18.1 Neither of the Parties shall be liable for non-performance or for partial, late, or defective performance of any obligation during the time the obligated Party is affected by force majeure events or Acts of God, and provided it is shown that such a cause prevented him from complying.

For purposes of the present Contract force majeure or Acts of God include the following, among others: strikes, work stoppages, fires, earthquakes, tremors, landslides, avalanches, floods, hurricanes, storms, explosions, unforeseeable circumstances, wars, guerrillas, acts of terrorism, blockades, uncontrollable delays in transportation, impossibility to obtain, though attempted sufficiently in advance, adequate facilities for the transport of materials, equipment and services, or any other cause, whether similar or dissimilar to those specifically listed here, which are beyond said Party's reasonable control or could not have been foreseen by said Party or, even though foreseen, could not be avoided.

- 18.2 The Party affected by the force majeure or Acts of God shall immediately notify the other Party of such event and shall affirm the manner in which it affects the performance of the corresponding obligation.

In case of partial, delayed or defective performance of an obligation affected by force majeure or Acts of God, the Parties shall continue discharging contract obligations not affected in any way by said cause. Furthermore, the Party obliged to perform shall use his best efforts to perform in accord with the Parties' joint intentions as expressed in the Contract.

The Party affected by the aforementioned causes shall restart compliance with the contract terms and conditions within a reasonable

period of time after said cause or causes have disappeared. The Party not affected shall cooperate with the affected Party in this effort.

In cases of strikes, work stoppages and other similar events neither of the Parties may impose on the other a solution contrary to the other's judgement.

18.3 The period during which the effects of the force majeure or the Acts of God affect the performance with contractual obligations shall be added to the term provided for performance of said obligations and, if appropriate, the Term of the Contract.

18.4 PETROPERU shall exert the efforts necessary to obtain the proper Government authorities' assistance and cooperation so that they take measures to insure the implementation and continuing operation, and the safety of the activities contemplated under the present Contract.

It is agreed that when either of the Parties considers, in his sole judgement, that his personnel or that of his Subcontractors cannot operate within the Contract Area with the necessary safety for their physical integrity, the invocation of force majeure or of an Act of God by either of the Parties shall not be contested, provided articles 1314 and 1315 of the Civil Code have been complied with.

18.5 The Parties shall consult in the Supervisory Committee about anything pertaining to this clause.

CLAUSE NINETEEN - ACCOUNTING BOOKS

19.1 The Contractor shall keep his accounting in Peru and, pursuant to article 71 of the Tax Code-General Principles, he is authorized to keep his accounts in Dollars, the guidelines set out in the aforementioned article 71 being applicable to him. Accounts shall be kept in accord with legislative standards as well as annex "E" and accounting practices established and accepted in Peru. Furthermore, the Contractor shall keep all the books and records which may be necessary to account for, and give accounting evidence of, the activities he carries out nationally and abroad under the Contract as well as the composition and proper detailing of the income, investments, costs, expenses and Taxes he incurs in each fiscal year. In addition, within one hundred and twenty (120) Days from the Date of Signing of the Contract, the Contractor shall supply PETROPERU with a copy of the "Accounting Procedures Manual" he proposes to record his economic-financial operations.

19.2 PETROPERU, in no more than thirty (30) Days after receipt of the "Accounting Procedures Manual", shall send to the Contractor in writing those suggestions it deems pertinent to improve, amplify and/or delete some or several of the proposed accounting procedures. Should there be no formal pronouncement by PETROPERU within the aforementioned term it shall be considered, for all purposes, as approved.

Any significant change in the approved "Accounting Procedures Manual" shall first be submitted to PETROPERU for its approval, in accord with the procedure provided above.

- 19.3 The accounting books, the financial statements and their supporting documents shall be placed at the disposal of PETROPERU's duly authorized representatives for their inspection, during office hours, so as to check the accounts and elements of the "R" factor formula referred to in clause eight; and at the disposal of the General Tax Bureau for their audit in accord with the powers which the Tax Code vests in it; and at the disposal of the General Hydrocarbons Bureau for purposes of verifying the investments, costs, expenses and income, involved in the present Contract.

To the extent possible PETROPERU shall make sure that the inspection and audit functions referred to in the previous paragraph are performed in a coordinated manner.

- 19.4 The Contractor binds himself to submit to PETROPERU annually, and within thirty (30) Days of their being issued, the reports of its external auditors corresponding to the previous fiscal year and, within the following ninety (90) Days, a report with comments regarding the auditors' observations and what has been done to solve or correct such observations. Furthermore, he shall submit to PETROPERU a copy of the sworn income tax return and corresponding



annexes, within thirty (30) Days following the date of presentation of the sworn income tax return to the General Tax Bureau.

CLAUSE TWENTY - MISCELLANEOUS

20.1 If in one or more instances either of the Parties fails to invoke or insist on compliance with any of the present Contract's provisions or to exercise any of the rights granted under the present Contract, this shall not be construed as a waiver of said provision or right.

20.2 It is furthermore understood and agreed that in implementing the Operations referred to in this Contract the Contractor shall comply with all the resolutions which competent authorities might enact in pursuance of their legal powers.

Furthermore, the Contractor binds himself to comply with all dispositions of competent authorities relative to national defense and State security matters.

20.3 All natural, mineral or non-mineral, riches which the Contractor discovers during Operations must be immediately reported to PETROPERU and in no case may the Contractor make use of them in any form whatsoever unless, in accord with the law, he has some right over said riches, a right which shall be negotiated with the competent authority after prior authorization by PETROPERU. Should the Contractor, in the course of his Operations, discover items considered to be of national archaeological significance, he must suspend Operations at the site

and immediately report such fact to PETROPERU. Any delay due to this suspension will be considered as covered by item 18.1.

- 20.4 The Contractor relieves PETROPERU of any responsibility for the use Contractor may make of procedures, techniques, trademarks and any other property which is patented or in any manner owned by third parties and which, as a consequence of its use in Operations, could otherwise entail some responsibility for PETROPERU.
- 20.5 PETROPERU, as titleholder of the area and in accord with legislation in force may, for the benefit of the Contractor and at his request, procure the licenses, permits, easements, water and surface rights, rights of way to and from the Operations areas as well as any other type of right over any public or private lands not used for a utilitarian and/or economic purpose, which may be necessary for the Contractor to carry out his Operations within the Contract Area and, to the extent necessary, outside such area. The economic damages caused by the exercise of such rights shall be compensated for by the Contractor.
- 20.6 For purposes of meeting his obligations under the Contract, the Contractor may build and operate all necessary facilities, including drilling water wells, wharves, power plants, port works, terminals and any other installation or works within the Contract Area and, to the extent necessary, outside such area, while respecting the rights of third parties.

Furthermore, while respecting the rights of third parties and in accord with the legislation in effect the Contractor, for purposes of conducting the Operations, shall have the right to use, free of any cost, license or permit whatsoever, the water, timber, gravel and other construction materials located within the Contract Area and, as necessary, outside such area.

- 20.7 The indemnities and compensations to be paid for the economic damages caused by exercising the rights stipulated in items 20.4, 20.5 and 20.6 shall be for the Contractor's account while, in accord with the law, procuring the licenses, permits and rights referred to in such items shall be for PETROPERU's cost and account.
- 20.8 The Contractor shall contract for the maritime transportation in keeping with Peruvian legislation and respecting the fleet reserve.
- 20.9 With the exception only of incoming or outgoing traffic from Peru and in accord with the law, all the Contractor's requirements for transportation of goods and personnel within the territory of the Republic of Peru shall be covered by using maritime, river, air or land transportation means operated under Peruvian flag and/or by national companies.
- 20.10 At the Contractor's request PETROPERU shall cooperate in obtaining radio frequencies, licenses or authorizations to operate planes, helicopters and maritime and river vessels; as well as to hire foreign

personnel should local personnel with the qualifications required to operate or maintain the vessels and aircraft required for Operations under this Contract be unavailable. Licenses or authorizations needed for operating the radio frequencies, planes, helicopters and maritime and river vessels and the hiring of the aforementioned foreign personnel shall be carried out in accord with the applicable clauses of the Contract and the applicable legal provisions. The legal provisions now in effect on this subject are Decree Law No. 19482 and Decree Law No. 20106, which amends it.

- 20.11 The Contractor, under similar quality, price and availability conditions, shall preferentially hire the transportation services, referred to in this clause, which are owned by PETROPERU, its affiliates or subsidiaries, when it owns no fewer shares of their capital stock than that of Affiliates.
- 20.12 In accord with the legal provisions in effect at the time, the Contractor and his Subcontractors must give preference to national contractors so long as their prices and performance are competitive with foreign prices and performance and shall preferentially procure national materials, spare parts, other items and capital goods, to the extent that their quality, availability and prices are competitive.
- 20.13 The Contractor must maintain insurance coverage in all cases required by law. In accord with applicable legislation any insurance taken by the Contractor must be entered into with national insurance companies.

Copies of the insurance policies referred to in the previous paragraph shall be furnished to PETROPERU for its information. Furthermore, the Contractor shall furnish PETROPERU copies of any amendment, endorsement or extension of said policies and of any untoward occurrence or claim under the aforementioned policies.

In all cases the insurance policies shall include an endorsement whereby the insurance companies consider PETROPERU as a co-insured and renounce their subrogation right against PETROPERU.

20.14 During the Term of the Contract the Contractor has the obligation to, and is absolutely responsible for, the normal, effective, continuous, timely and total maintenance of the goods, materials and equipment used in Operations.

20.15 Unless the Parties have agreed the contrary, any payment or reimbursement made between the Parties shall be made within the thirty (30) Days following the date of presentation of the invoice, at the selling exchange rate which is stipulated in clause eleven.

In case either Party pays after the term provided in this item, the amount of the payment shall be subject to the interest rates noted below from the Day following the date on which it should have been paid:

a) For accounts expressed and payable in local currency the applicable rate shall be the maximum effective rate for credits of up to three hundred and sixty (360) Day's established by the Central Reserve Bank of Peru for individuals not related to the financial system, in force during the period in which such payment is made; or whichever rate replaces it.

b) For accounts expressed in Dollars, and payable in local currency or in Dollars, the applicable rate shall be the preferential rate (Prime Rate), of the Chase Manhattan Bank, N.A., New York, New York, in effect during the period when such payment must be made.

20.16 The previous item's provisions shall apply to all accounts between the Parties which arise under the Contract or from any other agreement or transaction between the Parties, with the exception of the specific provisions of the "Association Agreements" referred to in clause twenty-three, item 8.12 and item 8.13. Different interest payment terms may be agreed upon in writing by the Parties. The provisions contained herein concerning applicable interest shall in no way change the Parties' legal rights and remedies to enforce the payment of amounts owed.

20.17 At the Contractor's request PETROPERU shall employ its best efforts to cooperate with, and help the Contractor in promoting the Contract's objectives in his dealings and contacts with public agencies and

offices, as well as to coordinate such public agencies' and offices' activities with respect to the Contractor and the Operations.

CLAUSE TWENTY ONE - NOTICES AND COMMUNICATIONS

21.1 Any notice or communication pertaining the present Contract shall be considered as validly given if it is sent in writing and is delivered with acknowledgement of receipt or if received through registered mail, by telegraph, telex or facsimile addressed to the addressee on a Business Day to the following addresses:

PETROPERU:

PETROLEOS DEL PERU

Gerencia General

Paseo de la Republica 3361

Lima 27

Contractor

MOBIL EXPLORATION AND PRODUCING PERU INC.,

SUCURSAL PERUANA

Av. Dos de Mayo 1321

Lima 27

21.2 Either of the Parties shall have the right to change its address for purposes of notices and communications by giving notice to the other

Party at least five (5) Business Days in advance of the effective date of such change.

- 21.3 Should two or more entities comprise the Contractor, notices or communications shall be sent to the party named as "Operator"; that being deemed delivery to all entities comprising the Contractor, except for notices or communications under clauses nine, eleven, seventeen and twenty-four, which shall be sent by PETROPERU to each entity comprising the Contractor.

CLAUSE TWENTY-TWO - SUBMISSION TO PERUVIAN LAWS AND JURISDICTION

- 22.1 This Contract has been negotiated, drafted and signed in accord with Peruvian laws and its content, interpretation, implementation and other consequences resulting from it shall be governed by the laws of the Republic of Peru. Consequently, any difference arising between the Contractor and PETROPERU regarding the Contract's interpretation or implementation, or of any part of it, which cannot be resolved by mutual agreement, shall be exclusively submitted to the jurisdiction of the Judges and Courts of Lima, Peru. The Parties renounce any diplomatic claims and expressly submit themselves to the laws of Peru.
- 22.2 This Contract is drafted and interpreted in the Spanish language, hence, the Parties agree that this is the only official version.



CLAUSE TWENTY-THREE - ASSOCIATION

- 23.1 The Parties agree that the option which PETROPERU has to associate with Contractor, as provided in item 6.10 of the Bases approved by Decree Law No. 22774, shall be for up to fifty percent (50%) interest. Up to this percentage PETROPERU may choose whatever interest it wishes to take in construction of the Main Pipeline. If PETROPERU exercises its option and an "Association Contract" is agreed, the Contractor shall reduce his share in the construction and ownership of the Main Pipeline, correspondingly.
- 23.2 Without prejudice to the provisions of item 23.1, PETROPERU has the right to enter into partnership with the Contractor if it deems it necessary to improve or speed up the "Initial Development and Main Pipeline Plan" submitted by the latter, in accord with items 4.15, 4.16 and 4.18, indicating the means of improving or speeding up the development plan and the interest it proposes to take.
- 23.3 The right PETROPERU has to enter into an association in accord with items 23.1 and 23.2 shall be exercised within the term, and as provided in clause four.

In addition, if Contractor plans construction of a Main Pipeline at a time other than as provided in clause four, he shall so notify PETROPERU, including in such notice technical and economic data regarding the Main Pipeline to be constructed in order that, within a

term of no more than sixty (60) Days PETROPERU shall advise him whether it is exercising the option provided in item 23.1.

23.4 If PETROPERU decides to associate in the construction of a Main Pipeline or in the Development and Production, in accord with the previous items, the Parties shall have a term of eight (8) Months to formalize an "Association Agreement". In this case the period provided in item 5.2 shall not apply. The period fixed in the "Association Agreement" will be applicable.

23.5 The Parties shall pay for and cover their respective interests in the association, without the other Party's having any obligation whatsoever to participate or to in any way cooperate in the financing of the other's interest, except as provided in item 5.17. At the time PETROPERU states whether it intends to exercise its right to participate in the Main Pipeline or in Development, each of the Parties shall indicate their respective sources and methods of financing.

#### CLAUSE TWENTY-FOUR - TERMINATION

24.1 Except for the cases set out in item 24.3, when one of the Parties defaults in any of the obligations stipulated in the Contract for reasons other than force majeure or Acts of God, the other Party may advise said Party in writing, communicating the default and its intention to terminate the Contract at the end of a sixty (60) Day period, unless such default is corrected within said period. However,

within a period of thirty (30) Days following said period of sixty (60) Days the Party which is in default may make a judicial application for the Contract to continue and said Contract shall continue in force until the final judicial resolution declaring termination of the Contract has been enacted and executed.

The Parties acknowledge that during the exploitation phase the provisions of this item can be invoked by the Party affected by the default so as to apply to one or to all Contracts, affecting or not affecting the other Contracts under the present Contract, depending on the circumstances and on the nature of the default.

24.2 Upon termination of the Contract all the rights and obligations of the Parties provided specified in the Contract, shall cease subject to the following:

- a) That the Parties' rights and obligations under this Contract arising prior to termination be respected; and
- b) That in the case of default and liability incurred on a date prior to termination, by defaulting Party shall meet the obligation in default under the Contract except for the cases contemplated in item 24.3.

24.3 The Contract shall be terminated as a matter of law and without any prior proceedings, in the following cases:

- 24.3.1      Should the guaranties set out in annexes "C-1", "C-2", "C-3" or "C-4" and "D" not be in effect within the periods provided in items 3.5 and 3.7.
- 24.3.2      Should the Contractor default in executing the minimum guaranteed program in any of the exploration phase's stages or periods after having used any extensions provided in item 3.4 and without reasons satisfactory to PETROPERU.
- 24.3.3      If upon expiry of the exploration phase no declaration of Commercial Discovery has been made.
- 24.3.4      In the specific cases provided in items 4.1, 4.2, 4.9, 4.12 and 5.2.
- 24.3.5      If the Contractor or his parent company is declared bankrupt in Peru or abroad, except in the case of an agreement to the contrary between the Parties.
- 24.3.6      Upon expiry of the contract term or before, by agreement of the Parties.
- 24.4      Upon termination of the Contract the Contractor shall deliver title to PETROPERU, at no cost nor charge to it, in a proper state of preservation, maintenance and operating condition taking into account

the normal wear produced by proper use, all the camps, buildings and other fixed facilities, pumps, communications and power installations and their machinery used by the Contractor in Peru provided they are connected with and/or accessories used exclusively for Contract's Operations and are owned by the Contractor.

If Liquid Hydrocarbons and Non-Associated Natural Gas have been exploited together, at the end of the term established in item 3.1 for the Liquid Hydrocarbon exploitation phase, the Contractor shall deliver title to PETROPERU, at no charge nor cost to it, in a good state of preservation, maintenance and operating condition taking into account the normal wear produced by proper use, the equipment and facilities involved in the exploitation of Liquid Hydrocarbons, which are not necessary for the exploitation of the Non-Associated Natural Gas.

The equipment and facilities retained by Contractor for the exploitation of the Non-Associated Natural Gas and which have also been used in the exploitation of Liquid Hydrocarbons, even though they shall remain under the ownership and under the Contractor's control, operation and responsibility, shall serve both operations. To this end a contract shall be entered into providing, among other matters, their sharing the cost of operations on a pro rata basis in accord with their use.

If Contractor has been using equipment and facilities described in this item's first paragraph but which are not connected to, nor exclusively accessory to the Contract's Operations that is, that they have also been used for operations in other areas of the country under Hydrocarbon exploration and exploitation contracts still in effect, the Contractor shall continue to own and use them without adversely affecting the Operations it had been carrying out under the Contract. The Parties, if they deem it appropriate, shall enter into an agreement which will set down the terms and conditions under which they shall use them jointly and shall share their cost of operation on a pro rata basis in accord with their use.

#### ADDITIONAL CLAUSE

In accord with legislation in effect, the contracts and the public document which the present draft may give rise to are not subject to the payment of any taxes.

ANNEX "A"

This annex consists of 59 pages of text. It is a legal description of blocks 28, 29, 30 and 53 and each parcel included in each block together with the area in each of such units. No English translation of the text is deemed appropriate at this time.

ANNEX "B"

This annex consists of a one page map of the Contract Area.



ANNEX "C-1"

LETTER OF GUARANTY FOR THE FIRST STAGE OF THE BASIC  
EXPLORATION PERIOD

LETTER OF GUARANTY NO.

Lima,

Messrs.

Petroleos del Peru S.A.

LIMA

Gentlemen:

We, the Bank, hereby constitute ourselves as joint and several guarantors for Mobil Exploration and Producing Peru Inc., Sucursal Peruana (hereinafter referred to as Contractor), in favor of Petroleos del Peru S.A. (hereinafter referred to as PETROPERU) for the sum of up to U.S. \$29,200,000.00 (twenty nine million two hundred thousand Dollars) in order to guarantee the faithful compliance with Contractor's minimum work program contained in sub-item 4.7.1 of clause four of the Contract signed with PETROPERU (hereinafter referred to as the Contract).

The obligation which the Bank assumes under the present guaranty is limited to paying PETROPERU the amount demanded in its payment request, provided it does not exceed the amount of the guaranty in effect on the day the payment request is made. The amount of the guaranty in effect shall be understood as that amount remaining after deducting from the

original amount the sum total of the reduction authorizations issued by PETROPERU and received by the Bank pursuant to the present guaranty.

1. This is a joint and several, irrevocable, unconditional and automatically collectible guaranty, payable during the period it is in effect, upon presentation of a notarial letter addressed by PETROPERU to the Bank requesting payment of a sum no greater than the amount of the guaranty then in effect, declaring that the Contractor has not complied with the obligations of the aforementioned minimum work program under the Contract and accompanying said letter, as sole precaution and justification, a notarially certified copy of the notarial letter sent by PETROPERU to the Contractor, giving notice of its intention of cashing the guaranty. Said notarial letter from PETROPERU to the Contractor must have been delivered to him at least thirty (30) calendar days before the date on which PETROPERU submits its claim to the Bank for payment.

2. The amount of the present guaranty shall be reduced each time the Bank receives from the Contractor a letter from PETROPERU stating that the Contractor has completed execution of a given portion of the aforementioned minimum work program.

The reductions shall be made in the following manner, amounts and occasions:

a) By U.S. \$500,000.00 (five hundred thousand Dollars) upon completion of the aeromagnetic survey and interpretation of its results.

b) With reference to execution of the seismic work:

i) The amount guaranteed for this part of the work shall be taken to be U.S. \$19,600,000 (nineteen million six hundred thousand Dollars) and that the seismic survey represents eighty per cent (80%) of the total guaranteed amount while the interpretation of its results accounts for the remaining twenty per cent (20%).

ii) After every three (3) Month's period, the first one running from the Effective Date of the Contract, a reduction in the amount of the guaranty shall be carried out based on the following formulas:

For the seismic survey:

$$R = \frac{S}{M} \times (0.8 \times C)$$

For interpreting its results:

$$R = \frac{S}{M} \times (0.2 \times C)$$

Where:

R : Amount of the guaranty reduction.

S : Linear kilometers surveyed and interpreted, as the case may be, during the corresponding three (3) Month period.

M : 1,600 (sixteen hundred) line kilometers, that is, the total of this kind of work guaranteed in accord with the program.

C : Guaranteed amount of the work indicated in paragraph i), above.

c) By U.S. \$800,000.00 (eight hundred thousand Dollars) upon completion of data gathering at the gravity stations and interpretation of their results.

d) Relative to drilling the first Exploration Well:

i) U.S. \$1,660,000.00 (one million six hundred sixty thousand Dollars) when drilling has been completed to the

depth necessary to set the thirteen and three-eighths inch (13 3/8") casing.

ii) U.S. \$3,320,000.00 (three million three hundred twenty thousand Dollars) when drilling has been completed to the depth necessary to set the nine and five-eighths inch (9 5/8") casing.

iii) The balance of U.S. \$3,320,000.00 (three million three hundred and twenty thousand Dollars) when the drilling has penetrated three hundred and thirty feet (330') into the Paleozoic or when it has reached a depth of five thousand meters (5,000 m.), whichever first occurs, and the well has been completed.

3. The Contractor shall submit requests for reductions to PETROPERU which, in accord with the Contract's provisions, shall authorize them expressly and in writing within the term provided in item 3.5 of the Contract, delivering such authorization to the Contractor. Said authorization must indicate the amount of the reduction to be made pursuant to the previous paragraphs.

4. Upon Contractor's presenting to the Bank the authorization by PETROPERU referred to in the previous paragraph, the Bank shall immediately proceed to deem the amount of the guaranty reduced by the corresponding sum, and shall report such event in writing to

PETROPERU. It shall not be necessary to issue a new guaranty document for the reduced amount but the original shall be taken as valid only for such amount.

5. The present guaranty shall expire not later than ( ) Months and twenty (20) Business Days from the date of the present guaranty, that is on , unless before that date the Bank receives a letter from PETROPERU releasing the Bank and the Contractor from any responsibility under the present guaranty, in which case the present guaranty shall be cancelled as of the date of the aforementioned letter from PETROPERU.

From the expiry or cancellation date no claim whatsoever may be submitted regarding the present guaranty and the Bank and the Contractor shall be released from any responsibility or obligation regarding the present guaranty.

Sincerely,

Bank

[illegible]

LETTER OF GUARANTY NO.

Lima,

**Messrs.**

Petroleos del Peru S.A.

LIMA

Gentlemen:

We, the Bank, hereby constitute ourselves as joint and several guarantors for Mobil Exploration and Producing Peru Inc., Sucursal Peruana (hereinafter referred to as the Contractor), in favor of Petroleos del Peru S.A. (hereinafter referred to as PETROPERU) for the sum of up to U.S. \$36,000,000.00 (thirty six million Dollars) in order to guarantee the faithful compliance with the Contractor's minimum work program contained in sub-item 4.7.2 of clause four of the Contract signed with PETROPERU (hereinafter referred to as the Contract).

The obligation which the \_\_\_\_\_ Bank assumes under the present guaranty is limited to paying PETROPERU the amount demanded in its payment request, provided it does not exceed the amount of the guaranty in effect on

the day the payment request is made. The amount of the guaranty in effect shall be understood as that amount remaining after deducting from the original amount the sum total of the reduction authorizations issued by PETROPERU and received by the \_\_\_\_\_ Bank pursuant to the present guaranty.

1. This is a joint and several, irrevocable, unconditional and automatically collectible guaranty payable during the period it is in effect, upon presentation of a notarial letter addressed by PETROPERU to the \_\_\_\_\_ Bank requesting payment of a sum no greater than the amount of the guaranty then in effect, declaring that the Contractor has not complied with the obligations of the aforementioned minimum work program under the Contract and accompanying said letter, as sole precaution and justification, a notarially certified copy of the notarial letter sent by PETROPERU to the Contractor, giving notice of its intention of cashing the guaranty. Said notarial letter from PETROPERU to the Contractor must have been delivered to him at least thirty (30) calendar days before the date on which PETROPERU submits its claim to the \_\_\_\_\_ Bank for payment.

2. The amount of the present guaranty shall be reduced each time the \_\_\_\_\_ Bank receives from the Contractor a letter from PETROPERU stating that the Contractor has completed execution of a given portion of the aforementioned minimum work program.

The reductions shall be made in the following manner, amounts and occasions:



a) With reference to execution of the seismic work:

- i) The amount guaranteed for this part of the work shall be taken to be U.S. \$17,900,000 (seventeen million nine hundred thousand Dollars) and that the seismic survey represents eighty per cent (80%) of the total guaranteed amount while the interpretation of its results accounts for the remaining twenty per cent (20%).
- ii) After every three (3) Month's period, the first one running from the date the present guaranty is delivered to PETROPERU, a reduction in the amount of the guaranty shall be carried out based on the following formulas:

For the seismic survey:

$$R = \frac{S}{M} \times (0.8 \times C)$$

For interpreting its results:

$$\frac{S}{M} = \frac{R}{1,300} \times (0.2 \times C)$$

Where:

R : Amount of the guaranty reduction.

S : Linear kilometers surveyed and interpreted, as the case may be, during the corresponding three (3) Month period.

M : 1,300 (thirteen hundred) line kilometers, that is, the total of this kind of work guaranteed in accord with the program.

C : Guaranteed amount of the work indicated in paragraph 1), above.

b) Relative to drilling this second stage's two (2) Exploration Wells:

i) U.S. \$1,760,000.00 (one million seven hundred sixty thousand Dollars) when drilling of the first of said wells has been completed to the depth necessary to set the thirteen and three-eighths inch (13 3/8") casing.

ii) U.S. \$3,520,000.00 (three million five hundred twenty

thousand Dollars) when drilling of the first of said wells has been completed to the depth necessary to set the nine and five-eighths inch (9 5/8") casing.

- iii) The balance of U.S. \$3,520,000.00 (three million three hundred twenty thousand Dollars) when drilling of the first of said wells has penetrated three hundred and thirty feet (330') into the Paleozoic or when it has reached a depth of five thousand meters (5,000 m.), whichever first occurs, and the well has been completed.
- iv) U.S. \$1,860,000.00 (one million eight hundred sixty thousand Dollars) when drilling of the second of such wells has reached the depth necessary to set the thirteen and three-eighths inch (13 3/8") casing.
- v) U.S. \$3,720,000.00 (three million seven hundred twenty thousand Dollars) when drilling of the second of such wells has reached the depth necessary to set the nine and five-eighths inch (9 5/8") casing.
- vi) U.S. \$3,720,000.00 (three million seven hundred twenty thousand Dollars) when the drilling of the second of said wells has penetrated three hundred and thirty feet (330') into the Paleozoic or when it has reached a depth of five

thousand meters (5,000 m.), whichever first occurs, and the well has been completed.

3. The Contractor shall submit requests for reductions to PETROPERU which, in accord with the Contract's provisions, shall authorize them expressly and in writing within the term provided in item 3.5 of the Contract, delivering such authorization to the Contractor. Said authorization must indicate the amount of the reduction to be made pursuant to the previous paragraphs.
4. Upon Contractor's presenting to the Bank the authorization by PETROPERU referred to in the previous paragraph, the Bank shall immediately proceed to deem the amount of the guaranty reduced by the corresponding sum, and shall report such event in writing to PETROPERU. It shall not be necessary to issue a new guaranty document for the reduced amount but the original shall be taken as valid only for such amount.
5. The present guaranty shall expire not later than ( ) Months and twenty (20) Business Days from the date of the present guaranty, that is on , unless before that date the Bank receives a letter from PETROPERU releasing the Bank and the Contractor from any responsibility under the present guaranty, in which case the present guaranty shall be cancelled as of the date of the aforementioned letter from PETROPERU.

From the expiry or cancellation date no claim whatsoever may be submitted regarding the present guaranty and the Bank and the Contractor shall be released from any responsibility or obligation regarding the present guaranty.

Sincerely,

Bank

LETTER OF GUARANTY FOR THE EXPLORATION PHASE'S  
GUARANTEED EXTENSION PERIOD

**Lima,**

**Petroleos del Peru S.A.**

**Gentlemen:**

The obligation which the Bank assumes under the present guaranty is limited to paying PETROPERU the amount demanded in its payment request, provided it does not exceed the amount of the guaranty in effect on

the day the payment request is made. The amount of the guaranty in effect shall be understood as that amount remaining after deducting from the original amount the sum total of the reduction authorizations issued by PETROPERU and received by the Bank pursuant to item 4 of the present guaranty.

1. This is a joint and several, irrevocable, unconditional and automatically collectible guaranty, payable during the period it is in effect, upon presentation of a notarial letter addressed by PETROPERU to the                      Bank requesting payment of a sum no greater than the amount of the guaranty then in effect, declaring that the Contractor has not complied with the obligations of the aforementioned minimum work program under the Contract and accompanying said letter, as sole precaution and justification, a notarially certified copy of the notarial letter sent by PETROPERU to the Contractor, giving notice of its intention of cashing the guaranty. Said notarial letter from PETROPERU to the Contractor must have been delivered to him at least thirty (30) calendar days before the date on which PETROPERU submits its claim to the                      Bank for payment.

2. The amount of the present guaranty shall be reduced each time the                      Bank receives from the Contractor a letter from PETROPERU stating that the Contractor has completed execution of a given portion of the aforementioned minimum work program.

The reductions shall be made in the following manner, amounts and occasions:

a) With reference to execution of the seismic work:

i) The amount guaranteed for this part of the work shall be taken to be U.S. \$11,300,000 (eleven million three hundred thousand Dollars) and that the seismic survey represents eighty per cent (80%) of the total guaranteed amount while the interpretation of its results accounts for the remaining twenty per cent (20%).

ii) After each three (3) Month's period, the first one running from the date the present guaranty is delivered to PETROPERU, a reduction in the amount of the guaranty shall be carried out based on the following formulas:

For the seismic survey:

$$R = \frac{S}{M} \times (0.8 \times C)$$



For interpreting its results:

$$R = \frac{S}{M} \times (0.2 \times C)$$

Where:

R : Amount of the guaranty reduction.

S : Linear kilometers surveyed and interpreted, as the case may be, during the corresponding three (3) Month period.

M : 700 (seven hundred) line kilometers, that is, the total of this kind of work guaranteed in accord with the program.

C : Guaranteed amount of the work indicated in paragraph i), above.

To authorize the reduction request regarding the execution of the seismic work referred to in the present guaranty PETROPERU shall consider whether the manner in which this work is being carried out allows the Contractor to comply with his obligation that, at the end of the exploration phase, the seismic surveys involve a minimum of 300 line Km. (three hundred line kilometers) of seismic in each of the blocks which are part of the Contract Area. If this is

not so, the reduction of the present guaranty shall not apply.

b) Relative to drilling this second stage's two (2) Exploration Wells:

- i) U.S. \$1,960,000.00 (one million nine hundred sixty thousand Dollars) when drilling of the first of said wells has been completed to the depth necessary to set the thirteen and three-eighths inch (13 3/8") casing.
- ii) U.S. \$3,920,000.00 (three million nine hundred twenty thousand Dollars) when drilling of the first of said wells has been completed to the depth necessary to set the nine and five eighths inch (9 5/8") casing.
- iii) The balance of U.S. \$3,920,000.00 (three million nine hundred twenty thousand Dollars) when the drilling of the first of said wells has penetrated three hundred and thirty feet (330') into the Paleozoic or when it has reached a depth of five thousand meters (5,000 m.), whichever first occurs, and the well has been completed.
- iv) U.S. \$1,860,000.00 (one million eight hundred sixty thousand Dollars) when drilling of the second of such wells

has reached the depth necessary to set the thirteen and three-eighths inch (13 3/8") casing.

v) U.S. \$4,120,000.00 (four million one hundred twenty thousand Dollars) when drilling of the second of such wells has reached the depth necessary to set the nine and five-eighths inch (9 5/8") casing.

vi) U.S. \$4,120,000.00 (four million one hundred twenty thousand Dollars) when the drilling of the second of said wells has penetrated three hundred and thirty feet (330') into the Paleozoic or when it has reached a depth of five thousand meters (5,000 m.), whichever first occurs, and the well has been completed.

3. The Contractor shall submit requests for reductions to PETROPERU which, in accord with the Contract's provisions, shall authorize them expressly and in writing within the term provided in item 3.5 of the Contract, delivering such authorization to the Contractor. Said authorization must indicate the amount of the reduction to be made pursuant to the previous paragraphs.

4. Upon Contractor's presenting to the Bank the authorization by PETROPERU referred to in the previous paragraph, the Bank shall immediately proceed to deem the amount of the guaranty reduced by the corresponding sum, and shall report such event

in writing to PETROPERU. It shall not be necessary to issue a new guaranty document for the reduced amount but the original shall be taken as valid only for such amount.

5. The present guaranty shall expire not later than ( ) Months and twenty (20) Business Days from the date of the present guaranty, that is on , unless before that date the Bank receives a letter from PETROPERU releasing the Bank and the Contractor from any responsibility under the present guaranty, in which case the present guaranty shall be cancelled as of the date of the aforementioned letter from PETROPERU.

From the expiry or cancellation date no claim whatsoever may be submitted regarding the present guaranty and the Bank and the Contractor shall be released from any responsibility or obligation regarding the present guaranty.

Sincerely,

Bank

"ANNEX C-4"

LETTER OF GUARANTY FOR THE EXPLORATION PHASE'S  
ADDITIONAL EXTENSION PERIOD

LETTER OF GUARANTY NO.

Lima,

Messrs.

Petroleos del Peru S.A.

LIMA

Gentlemen:

We, the                      Bank, hereby constitute ourselves as joint and several guarantors for Mobil Exploration and Producing Peru Inc., Sucursal Peruana (hereinafter referred to as Contractor), in favor of Petroleos del Peru S.A. (hereinafter referred to as PETROPERU) for up to the sum of U.S. \$10,900,000.00 (ten million nine hundred thousand Dollars) in order to guarantee the faithful compliance with Contractor's minimum work program contained in sub-item 4.7.4 of clause four of the Contract signed with PETROPERU (hereinafter referred to as the Contract).

The obligation which the                      Bank assumes under the present guaranty is limited to paying PETROPERU the amount demanded in its payment request, provided it does not exceed the amount of the guaranty in effect on

the day the payment request is made. The amount of the guaranty in effect shall be understood as that amount remaining after deducting from the original amount the sum total of the reduction authorizations issued by PETROPERU and received by the Bank pursuant to item 4 of the present guaranty.

1. This is a joint and several, irrevocable, unconditional and automatically collectible guaranty payable, during the period it is in effect, upon presentation of a notarial letter addressed by PETROPERU to the                      Bank requesting payment of a sum no greater than the amount of the guaranty then in effect, declaring that the Contractor has not complied with the obligations of the aforementioned minimum work program under the Contract and accompanying said letter, as sole precaution and justification, a notarially certified copy of the notarial letter sent by PETROPERU to the Contractor, giving notice of its intention of cashing the guaranty. Said notarial letter from PETROPERU to the Contractor must have been delivered to him at least thirty (30) calendar days before the date in which PETROPERU submits its claim to the                      Bank for payment.

2. The amount of the present guaranty shall be reduced each time the                      Bank receives from the Contractor a letter from PETROPERU stating that the Contractor has completed execution of a given portion of the aforementioned minimum work program.

The reductions shall be made in the following manner, amounts and occasions:

Relative to the Exploration Well to be drilled in this extension period:

- i) U.S. \$2,180,000.00 (two million one hundred eighty thousand Dollars) when the drilling of said well has been completed to the depth necessary to set the thirteen and three-eighths inch (13 3/8") casing.
  - ii) U.S. \$4,360,000.00 (four million three hundred sixty thousand Dollars) when the drilling of said well has been completed to the depth necessary to set the nine and five-eighths inch (9 5/8") casing.
  - iii) The balance of U.S. \$4,360,000.00 (four million three hundred sixty thousand Dollars) when the drilling of said well has penetrated three hundred and thirty feet (330') into the Paleozoic or when it has reached a depth of five thousand meters (5,000 m.), whichever first occurs, and the well has been completed.
3. The Contractor shall submit requests for reductions to PETROPERU which, in accord with the Contract's provisions, shall authorize them

expressly and in writing within the term provided in item 3.5 of the Contract, delivering such authorization to the Contractor. Said authorization must indicate the amount of the reduction to be made pursuant to the previous paragraphs.

4. Upon the Contractor's presenting to the                      Bank the authorization by PETROPERU referred to in the previous paragraph, the                      Bank shall immediately proceed to deem the amount of the guaranty reduced by the corresponding sum, and shall report such event in writing to PETROPERU. It shall not be necessary to issue a new guaranty document for the reduced amount but the original shall be taken as valid only for such amount.

5. The present guaranty shall expire not later than                      (    ) Months and twenty (20) Business Days from the date of the present guaranty, that is on                      , unless before that date the                      Bank receives a letter from PETROPERU releasing the                      Bank and the Contractor from any responsibility under the present guaranty, in which case the present guaranty shall be cancelled as of the date of the aforementioned letter from PETROPERU.

From the expiry or cancellation date no claim whatsoever may be submitted regarding the present guaranty and the                      Bank and



the Contractor shall be released from any responsibility or obligation regarding the present guaranty.

Sincerely,

Bank

ANNEX "D"  
CORPORATE GUARANTY

New York,

Messrs.

Petroleos del Peru - PETROPERU S.A.

Paseo de la Republica 3361

Lima 27,

PERU

Mobil Oil Corporation hereby jointly and severally guarantees to Mobil Exploration and Producing Peru Inc., Sucursal Peruana, the amount involved in executing each of the annual work programs approved for the Development and Production in the exploitation phase of the Contract entered into by said Branch with PETROPERU for the Exploration, Development and Production of blocks 28, 29 and 30, and the possible inclusion of block 53.

This guaranty shall continue in effect for as long as the obligations which Mobil Exploration and Producing Peru Inc., Peruvian Branch, assumes under the Contract, still endure. For purposes of this guaranty Mobil Oil Corporation submits to the laws and courts of the Republic of Peru and expressly renounces any diplomatic claim in the same terms and with the same effect as appears in the Contract's clause twenty two.

Sincerely,

Mobil Oil Corporation

by,

ANNEX "E"  
ACCOUNTING PROCEDURE

SECTION 1  
GENERAL PROVISIONS

1.1 Purpose and Definitions

a) Purpose

The purpose of the present annex is to set out accounting rules and procedures which will permit determination of the Contractor's investments, expenses, operational costs and income for purposes of calculating the "R" factor referred to in clause eight of the Contract.

b) Definitions

The terms used in this annex shall have the same meaning as in the Contract.

## SECTION 2

### LIMITATIONS ON THE CONTRACTOR'S INVESTMENTS, EXPENSES AND OPERATIONAL COSTS

In principle, all of the investments, expenses and operational costs which the Contractor may incur in with regards to Operations, shall be recognized for purposes of calculating the "R" factor. This recognition shall be subject to only the following limitations:

#### 2.1 General Limitations

##### a) As to Personnel

The salaries, benefits and facilities offered to the local and foreign personnel shall, in principle, be in strict agreement with the Contractor's internal policy in effect from time to time.

##### b) As to Affiliate services

In the case of services rendered to Contractor by Affiliates, charges shall be based on costs without profits and shall be competitive with charges for services provided by other companies. In any case PETROPERU, through the Contractor, may obtain directly from the Affiliates' external auditors certified statements regarding those elements which make up the costs of the prices they charge.

c) As to materials and equipment

For purposes of valuing the materials and equipment allocated or assigned to a Field or which are moved from one Field to the other, the following values shall be taken into account, as appropriate:

- Materials and equipment (condition "A")

They shall be valued at the price of the corresponding commercial invoice plus additional importation costs, if applicable, and other costs recognized under generally accepted accounting principles and practice.

- Used materials and equipment (conditions "B" and "C")

Those materials and equipment which even though not new are in a usable state without any reconditioning shall be considered as in condition "B" and shall be appraised at seventy five per cent (75%) of the price of new materials.

- Those materials and equipment which may be used for their original function after proper reconditioning shall be considered as in condition "C" and shall be appraised at fifty per cent (50%) of the price of new materials and equipment.

d) As to freight rates and transportation expenses

For purposes of transportation of the equipment, materials and supplies necessary to carry out the Operations, the Contractor shall avoid paying for "dead freight". Should this occur, recognition of such disbursements shall be subject to PETROPERU's express acceptance in writing.

e) As to insurance

The net costs and premiums for insurance furnished in whole or in part by Contractor's Affiliates, shall be recognized only to the extent that they are competitive with charges by insurance companies unrelated to the Contractor.

f) As to taxes

To be excluded:

i) The Contractor's income tax.

ii) The tax on Contractor's remittances abroad.

iii) Fines, surcharges and readjustments resulting from failure to make timely payments of Peruvian taxes or similar levies in effect or assessments for minimum payments thereof.

iv) Import duties on items imported by Contractor not necessary for Operations.

g) As to overhead and administrative expenses

The expenses which the Contractor incurs abroad for the conduct and management of Operations shall be recognized for purposes of calculating the "R" factor during the Term of the Contract in the manner indicated below. Every calendar month the Contractor shall charge an amount equivalent to one-twelfth ( $1/12$ ) of the amount resulting from multiplying the following percentages by the sum of all the investments, expenses and operational costs which are estimated to be incurred during that calendar year:

i) Up to thirty million Dollars (U.S. \$30,000,000.00) per calendar year:

- For the first million Dollars: four per cent (4%).
- For the next six million Dollars (U.S. \$6,000,000.00): two and a half per cent (2.5%).
- For the excess over seven million Dollars (U.S. \$7,000,000.00): one and a half per cent (1.5%).



- ii) For the excess over thirty million Dollars (U.S. \$30,000,000.00): one half per cent (0.5%).

An appropriate adjustment shall be made at the end of the financial year after the actual amount of the investments, expenses and operational expenses is known.

h) As to research expenses

Research expenses for the development of new equipment, materials, procedures and techniques to be used in the search for, development and production of Hydrocarbons, as well as any expenses involved in improving them, after prior written approval by PETROPERU.

2.2 Investments, costs and expenses not recognized

- a) Costs and expenses incurred before the Date of Signing of the Contract.
- b) Interest costs on loans, including interest on supplier credits.
- c) Financial expenses in general.
- d) Hydrocarbon transportation and marketing costs and expenditures beyond the port of export.

- e) Amounts paid as a consequence of non-compliance with Contract obligations. However, the fines, penalties, and indemnities imposed by authorities or owed to third parties for actions taken in conducting activities permitted by the Contract, are not excluded.
- f) The costs and expenses for any bank guaranty which has to be extended pursuant to the Contract.
- g) Donations in general.
- h) Advertising expenses.
- i) Asset depreciations and amortizations.
- j) The costs of taking inventory should there be an assignment of the Contractor's rights under the Contract.

SECTION 3  
CONTRACTOR'S INCOME

For purposes of the "R" factor the following shall also be considered as Contractor's income:

- Loss of profits insurance payments.
- Insurance payments which are not used to replace insured property lost in accidents.

#### SECTION 4

##### INVENTORIES AND VALUATION OF ASSETS

- 4.1 The Contractor shall keep an account of all real estate and chattels used in the Operations in accord with normal accounting practices in Peru and in the international oil industry.
- 4.2 PETROPERU may ask the Contractor for information regarding its property any time it deems it appropriate.
- 4.3 The Contractor shall, at reasonable intervals, inventory the assets appurtenant to the Contract; at least once every calendar year for chattels and once every three (3) calendar years for real estate. The Contractor, at least thirty (30) days in advance, shall send a written notice of its intention to take inventory and PETROPERU, using its judgement, shall decide whether to be represented when such inventory is taken.
- 4.4 In case the results of the inventory taken differ from the Contractor's official records, he must make the appropriate conciliations and adjustments, notifying and explaining them in writing to PETROPERU. Should the conciliations or adjustments made, or the explanations given, not be satisfactory to PETROPERU, the dispute shall be submitted to the Contractor's external auditors, who shall give their opinion in the shortest

time possible so that the Parties may resolve the matter  
appropriately.

## SECTION 5

### REVISION OF THE ACCOUNTING PROCEDURE

The provisions of the present Accounting Procedure may be changed by agreement between the Contractor and PETROPERU. The changes shall be made in writing and shall indicate the date as of which they shall apply.

## SECTION 6

### CONFLICT WITH THE CONTRACT

Should a conflict arise between this Accounting Procedure and the Contract, the provisions of the Contract shall prevail.

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ANNEX "A"	: BLOCK DESCRIPTIONS
ANNEX "B"	: BLOCK MAP
ANNEX "C-1"	: LETTER OF GUARANTY FOR THE FIRST STAGE OF THE BASIC EXPLORATION PERIOD
ANNEX "C-2"	: LETTER OF GUARANTY FOR THE SECOND STAGE OF THE BASIC EXPLORATION PERIOD
ANNEX "C-3"	: LETTER OF GUARANTY FOR THE EXPLORATION PHASE'S GUARANTEED EXTENSION PERIOD
ANNEX "C-4"	: LETTER OF GUARANTY FOR THE EXPLORATION PHASE'S ADDITIONAL EXTENSION PERIOD
ANNEX "D"	: CORPORATE GUARANTEE
ANNEX "E"	: ACCOUNTING PROCEDURE

You, Mr. Notary, shall attach the transcription of the Agreement of the Board of PETROPERU No. D/260-89 of September 14, 1989; Supreme Resolution No. 056-89-MIPRE, that appoints the President of the Board of PETROPERU; the documents showing the authorizations granted to the representatives of Mobil Exploration and Producing Peru Inc., Sucursal Peruana, to sign the present document; Directorial Resolution No. 1339-88-EM/DGH of December 12, 1988, through which said branch ("Sucursal") is registered in the Public Register of Oil Contractors and Contracts; the certifications issued by the Central Reserve Bank of Peru of the approvals granted this document by its Board and the authorization to its representatives to sign it; the attestation of the authorization given the representative of Mobil Oil Corporation to participate in the present document; the text of Supreme Resolution No. 057-89-EF/43.40, dated May 17, 1989, through which the Vice Minister of Finance, Mr. Arturo Alba Bravo, is appointed; and Supreme Decree No. 012-89-EM/VME, dated September 14, 1989, which approves the contracts referred to in the present document; make the present draft into a public document and send the pertinent notices to the Public Register of Hydrocarbons to duly record the present instrument.

Lima, September 15, 1989

## APPENDIX F

# National Park Service Concession Contract

This appendix contains the most recent text of the National Park Service concession contract as published in the *Federal Register*.<sup>1</sup> We have also included the section-by-section analysis of the contract from the *Federal Register*. The text of the agreement itself starts on page 3147.

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<sup>1</sup> *Federal Register*, Volume 58, No. 4, 7 January 1993, pp. 3140 - 3158.

## DEPARTMENT OF THE INTERIOR

## National Park Service

## Final Revision of National Park Service Standard Concession Contract

**SUMMARY:** The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the national park system. The authorizations for larger concessions primarily are in the form of standard language NPS concession contracts. NPS has amended its standard language concession contract (hereinafter the "old standard contract") in the form of a new standard concession contract (hereinafter the "new standard contract") to clarify certain provisions and to implement certain new contract terms in the public interest. NPS will utilize this form contract as a guide in its concession contracting process but each concession contract contains terms unique to it and NPS frequently alters standard provisions as needed to implement particular contract objectives. The new standard contract is set forth below.

**EFFECTIVE DATE:** January 7, 1993.

**FOR FURTHER INFORMATION CONTACT:** Lee Davis, Chief, Concessions Division, National Park Service, Washington, D.C. 20013-7127. Tele. (202) 343-3784.

**SUPPLEMENTARY INFORMATION:** On September 3, 1992, NPS published for public comment in the *Federal Register* proposed amendments to the old standard concession contract. The changes were proposed to implement certain aspects of the Secretary of the Interior's reform of the NPS concessions program and otherwise to make certain needed changes to the old standard contract. (See the preamble to the proposed amendments at 57 FR 40508 for a description of the premises and objectives of the Secretary's concessions reform initiative. Interested persons should also review the preambles to both the proposed and final new NPS concession regulations (56 FR 41894 and 57 FR 40496) for further information).

NPS received 61 public comments on the proposed amendments to the old standard contract, including a number of comments from environmental organizations, individual concessioners, and, the Conference of National Park Concessioners (on behalf of its membership which includes some but not all NPS concessioners). Approximately 4% of existing concessioners individually commented on the proposal. Approximately 13% of

existing concessioners with concession contracts individually commented on the proposal. The substance of these comments, as well as certain changes NPS has made in its proposal, are discussed below. Additionally, NPS has made a number of clarifying, editorial and technical changes to the new standard contract as proposed consistent with its purposes.

## Section-by-Section Analysis

## General Comments

Several commenters have suggested that NPS reduce the size of some of the paragraphs in the new standard contract to make it easier for readers to refer to specific contractual provisions. In response to this concern NPS has broken down some of the longer paragraphs into smaller paragraphs, and renumbered these "new" paragraphs accordingly.

A few commenters discussed issues relating to NPS concession contracting regulations which were recently amended by NPS in furtherance of the objectives of the Secretary's concession reform initiative. These issues are not further discussed here as they were the subject of public comment in the adoption of the amended regulations. The amended regulations were published in final in the *Federal Register* on September 3, 1992 (57 FR 40496).

One commenter asserted that NPS has violated applicable law in publishing the proposed changes to the old standard contract as a public notice with opportunity for comment rather than as a regulation. NPS disagrees and considers that the process used to obtain public comment on its proposed changes to the old standard contract is lawful. In fact, NPS solicited public comment on the proposed changes as a matter of policy to assure a full discussion of the issues involved. It was not required by law to do so.

Several commenters urged NPS to increase the length of concession contract terms. Others supported shorter term contracts. Neither of these views deal with the substance of the new standard contract as the term of a contract is not a matter determined by the new standard contract. However, in determining the appropriate length of a concession contract, NPS takes into account various considerations. These include the need to encourage competition for concession contracts and the level of investment required by the contract. These factors necessarily vary from contract to contract.

## Whereas Clauses

The new standard contract deletes the *whereas* clause in the old standard contract which references the concessioner's investment and risk of loss. Some commenters objected to the removal of this clause from the contract, claiming that it serves to balance the interests of concessioners against those of the government.

NPS disagrees. The clause contains language that is too specific for a standard language contract. It concerns only those concessioners that are required to make "substantial investments of capital." Moreover, the new standard contract does retain the *whereas* clause that reiterates the statutory obligation of the Secretary to "exercise his authority . . . in a manner consistent with a reasonable opportunity for the Concessioner to realize a profit."

Other commenters asserted that the *whereas* clauses should contain some acknowledgement of NPS's duty under the Concessions Policy Act (16 U.S.C. 20 et seq.) (hereinafter the "Act") to ensure that concession development is limited to that which is "necessary and appropriate for the public use and enjoyment of the parks." NPS agrees. Consistent with the Act, NPS has added the "necessary and appropriate" phrase to a *whereas* clause in the new standard contract.

## Section 1—Term of Contract

Some commenters opposed paragraph (b) of this section, which gives the Secretary the authority to shorten the term of the contract if the concessioner does not timely complete a building and improvement program. These commenters claimed that this provision is unfair, since many of the causes for delay in the completion of a building and improvement program are beyond a concessioner's control.

NPS recognizes that in some cases concessioners may not have total control over the performance of building and improvement programs. That is why paragraph (d) of this section allows the Secretary to relieve a concessioner from its building and improvement obligations when delays in the completion of the program are determined to be beyond the concessioner's control.

One commenter asked NPS to set up procedures through which a concessioner can ask for this type of relief. NPS believes further contract language in this regard is unnecessary as paragraph (d) details the procedure to be followed to the extent necessary for contract purposes.

### **Section 2—Accommodations, Facilities and Services**

One commenter stated that this section should state that if an Operating Plan requirement conflicts with the contract, the contract governs. NPS believes this is unnecessary as the final sentence of this section states that "such Operating Plan shall not amend or alter the material rights and liabilities of the parties to this CONTRACT."

Some commenters opposed the elimination from this section of the optional "preferential right to additional services" provision. They contended, essentially, that inclusion of this provision is necessary because it gives NPS greater control over concessions operations and serves to lessen the impact that concession operations have on park resources.

NPS disagrees with these arguments. NPS has full authority to strictly monitor concession operations and does not need this provision to achieve these purposes. The provision may be included in concession contracts where it is determined in a particular circumstance to be in the public interest. The provision was deleted because in the experience of NPS it served to impede fair competition in concession contracting.

One commenter stated that Operating Plans should include the requirement that concessioners use state-of-the-art environmental technology. NPS disagrees. NPS has adequate authority to require concessioners to adopt new technology as appropriate without including a specific contract term to this effect.

### **Section 3—Plant, Personnel and Rates**

The new standard contract omits the following sentence from the old standard contract: "The Secretary shall exercise his decision making authority with respect to the concessioner's rates and prices in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on its operations hereunder as a whole commensurate with the capital invested and the obligations assumed."

Some commenters objected to the removal of this sentence as they consider it an appropriate limitation to place on the NPS rate approval process. However, NPS considers that the sentence distorts the meaning of the Act as Section 3(c) of the Act requires rates to be judged "primarily by comparison with those current for facilities and services of comparable character under similar conditions." The new standard contract does include a *whereas* clause which appropriately reflects NPS

statutory responsibilities with respect to a concessioner's reasonable opportunity for profit.

One commenter suggested that the contract should prohibit concessioners from providing complimentary goods or services to government officials. NPS disagrees. This type of prohibition is more properly the subject of law or regulation independent of the concession contract. NPS, in this connection, has several requirements limiting NPS officials from accepting benefits from concessioners or other contractors.

One commenter suggested that the contract should give park superintendents "the right to direct the concessioner to dismiss any concessioner employee whose actions or judgements have proven to be inimical to the proper and lawful operation of the park or safety of visitors". NPS considers that termination of concession employment is the responsibility of the concessioner, not the NPS. However, NPS, under Section 3(b)(2) of the new standard contract, does have the ability to bring such circumstances to the attention of the concessioner for appropriate action to be taken.

One commenter contended that the new standard contract improperly describes the requirements of the Rehabilitation Act of 1973. The description of the meaning of this law has been deleted from the new standard contract to avoid any confusion in this regard.

Additionally, NPS has added language to this section to clarify that by agreeing to the concession contract, the concessioner acknowledges that its terms provide the concessioner with a reasonable opportunity for profit.

### **Section 4—Government Land and Improvements**

One commenter considered that this section should require a specific listing of government improvements. NPS agrees. Exhibits B and C to the contract, as referenced in this section, list the parcels of land and government improvements that are assigned to the concessioner under the contract.

### **Section 5—Maintenance**

One commenter was concerned that NPS may require concessioners to undertake major repairs under this section without providing the concessioner with any corresponding consideration. However, the first sentence of this section provides that its requirements are subject to section 4(e) of the contract. Section 4(e) requires concessioner repair expenditures to be consistent with a reasonable

opportunity for a concessioner to realize a profit on its operations.

### **Section 7—Utilities**

This section provides that if NPS is unable to provide the concessioner with utilities, the concessioner shall secure utilities at its own expense. Several commenters stated that this provision is unfair because it places a new burden—the expense of securing utilities—on concessioners. NPS disagrees with these comments. This section is substantially similar to the "Utilities" section of the old standard contract which also does not require NPS to provide utilities to the concessioner.

Several commenters opposed the requirement that upon contract termination concessioners must assign to the United States, without further compensation, any water rights they have acquired under the contract. However, the water rights relate to NPS land and are needed to fulfill NPS purposes. The concessioner obtains no permanent interest in the right under the new standard contract as a condition of the contract.

One commenter asked NPS to clarify the kinds of utility costs it will charge concessioners under this section. However, the scope of utility costs to be charged concessioners under this provision is a matter of NPS policy independent of the new standard contract.

### **Section 8—Accounting Records and Reports**

One commenter stated that this section should require the concessioner to provide NPS with a list of the members of its Board of Directors, as well as the names and addresses of all owners and part-owners of the concession. NPS currently accomplishes this to the extent appropriate by requiring businesses to provide this information when they submit an offer for a concession contract.

NPS, in response to a comment, has amended this section to clarify that the concessioner's system of account classification must be directly related to the Concessioner Annual Financial Report form prescribed by the Secretary. Further, NPS has added a sentence to paragraph (a) of this section to clarify that concessioners earning less than \$250,000 may submit financial statements that have been prepared without the involvement of an independent certified, or licensed public accountant, unless otherwise determined by the Secretary. In addition, NPS has added to this paragraph the clarifying requirement that concessioners which must have

their annual financial statements audited or reviewed are to use the accrual accounting method and include in their statements a footnote that reconciles their financial statements to their Federal income tax returns.

#### Section 9—Fees

Paragraph (a)(1) of this section as proposed provides that building use fees shall be adjusted annually by the Secretary to equal the fair annual value of government improvements assigned to the concessioner. Several commenters stated that it is unfair to adjust building use fees every year. NPS disagrees. This section merely requires building use fees to be reviewed annually to determine that they continue to reflect the fair annual value of park buildings. If the value has not changed, no amendments to the fees will be made. The word "shall" has been changed to "may" in the final document to reflect this intent.

One commenter stated that NPS should take into account maintenance and capital improvement obligations when setting building use fees. This is present NPS policy.

One commenter stated that franchise fees should not be reconsidered on a more frequent basis than every five years. NPS disagrees. The level of franchise fee is based on NPS's determination of the probable value of the privileges granted by the contract. As a concession operation's financial circumstances change over time, so does the probable value of the contract privileges. NPS believes that under many contracts a five year interval between fee reconsiderations is appropriate, as it is unlikely that the probable value of these contracts will dramatically change prior to the end of this five year period. Under other contracts, however, the probable value could change a great deal in two or three years, thereby warranting reconsideration. NPS notes that the reconsideration provision is a two way street. Fees may go down as well as up under its terms.

The proposed new standard contract also stated that fees "may" be reconsidered. One commenter suggested that the term "may" should be changed to "shall" since the Act requires the reconsideration of franchise fees. NPS agrees with this comment. The language in this section has been changed to provide that fees shall be reconsidered at the time intervals set forth in the contract. In reconsidering fees, however, NPS will not seek to adjust a fee that continues to reflect the probable value of a particular concession contract.

This section also provides that receipts from the sale of genuine United States Indian and native handicraft are excluded from NPS franchise fee calculations. A few commenters objected to this exclusion, which has been included in concession contracts for many years, claiming that it is no longer necessary to stimulate the sale of Indian and native handicraft. NPS disagrees with these objections. It considers that this exclusion continues to represent sound public policy.

Section 9(e) of the contract provides for advisory arbitration to resolve fee reconsideration disputes. One commenter objected to the advisory nature of this procedure. As a matter of law, however, NPS cannot allow itself to be party to a binding arbitration proceeding.

NPS, however, has clarified and made more specific the dispute resolution procedure of Section 9(e). First, instead of referring to this procedure as an "advisory arbitration", the new language refers to it as a "mediation" and includes appropriate procedural requirements in this regard. The term "mediation" is a better description of the process involved in this section, as the goal of the process is to advise, rather than bind, the Secretary. Second, to the mutual benefit of the government and concessioners, the time deadlines of this section have been streamlined to expedite the reconsideration process.

#### Section 10—Accounts

This section authorizes as optional provisions two types of accounts for building and improvement programs. The optional section 10(a) requires the concessioner to remit funds into a "Government Improvement Account" in consideration of the right to use and occupy government-owned buildings. The concessioner accesses this account to fund the repairs and improvements of government improvements which directly support concession services.

Optional section 10(b) requires the concessioner to remit a portion of its revenues into a "Capital Account" as partial consideration for the privileges granted under the contract. The concessioner accesses this account to fund improvements which directly support concession services.

Several commenters claimed that this section violates the Act's requirement that concessioners receive possessory interest for the improvements they make to structures on park lands as improvements funded from the accounts are not eligible for possessory interest. NPS disagrees with this contention for the reasons discussed below in

connection with the general discussion of possessory interest.

For a variety of reasons, several commenters objected to using the National Park Foundation as a trustee for the funds concessioners deposit in the Section 10 accounts. NPS has eliminated this role for the National Park Foundation from the new standard contract.

Other commenters urged that Section 10 account funds should not be restricted to funding only improvements that directly support concession services. They asked that NPS make these funds available for resource protection, interpretation, research, and other park purposes. NPS, however, is required by law to restrict the use of these funds to improvements that directly support concession operations.

Another commenter suggested that NPS further define the term "routine operational maintenance." NPS disagrees with this suggestion. What is routine maintenance in one park may not be routine in another. The Maintenance Agreement allows for appropriate definition of these requirements on a case-by-case basis.

#### Section 11—Bond and Lien

One commenter stated that while he supports the general thrust of this provision, he would prefer it to include a "financial penalty clause" which would impose financial penalties on a party for failing to comply with the contract. NPS is presently studying this suggestion for possible future implementation.

#### Section 12—Termination

The terms of the new standard contract clarify the Secretary's authority to terminate or suspend operations under a concession contract. Several commenters stated that they support the general thrust of this clarification to the authority contained in the old standard contract.

#### Section 13—Compensation

The aspect of the new standard contract most criticized by the NPS concessioners that submitted comments is its amendment to the measure of compensation due a concessioner for possessory interest. (As noted, approximately 4% of concessioners individually commented and approximately 13% of contract concessioners commented.) The amendment, however, was supported strongly by the environmental groups which submitted comments.

The general objective of the amendment is to change, in certain circumstances, the compensation

standard for a concessioner's possessory interest in improvements it constructs from one based on the appreciated value of the improvements to one based on the actual cost to a concessioner of constructing an improvement, less depreciation. The fundamental reason for this change is to eliminate from concession contracts in the public interest an unnecessary and otherwise detrimental liability for payment of compensation to concessioners.

"Possessory interest" is the legal term for the compensable interest in real property a concessioner obtains pursuant to a concession contract when it makes capital improvements on park lands or to government buildings. Under the old standard contract, a concessioner is entitled to receive compensation for possessory interest in capital improvements it makes either in the amount of the "sound value" of the improvement or the book value of the improvement, depending on the circumstances. Sound value (referred to hereinafter as "sound value compensation") is defined generally as "reconstruction cost less depreciation," but, "not to exceed fair market value." Sound value, in effect, provides the concessioner compensation for the appreciated value of its buildings as the compensation is based on either the reconstruction cost or fair market value of a building, calculated as of the time it is transferred by a concessioner, not as of the time of construction.

The major difference in possessory interest compensation between the old and the new standard contract is that the new standard contract generally provides for a redefined "fair value" possessory interest compensation instead of sound value. (The new standard contract also changes book value to fair value in most circumstances but this is a technical change for consistency purposes as fair value, except for possible differences in depreciation schedules, generally equates to book value.)

Fair value compensation is redefined in the new standard contract as the "original construction cost of the improvement less straight line depreciation over the estimated useful life of the improvement according to Generally Accepted Accounting Principles." For NPS purposes, such useful life is not to exceed thirty years. Fair value compensation under the new standard contract provides the concessioner compensation for the improvements it makes at actual cost less depreciation, but, unlike sound value compensation, does not provide compensation for the appreciated value of concessioner improvements.

The NPS concessioners which commented individually and the Conference of National Park Concessioners objected to this amendment, contending that replacing sound value compensation with fair value compensation is detrimental and not authorized by the Act. NPS, however, after thorough examination of these views, continues to consider that the change to fair value compensation in the new standard contract is in the public interest and authorized by law. Particularly, NPS considers that the sound value possessory interest compensation provision contained in the old standard contract is no longer a prudent term to include in concession contracts for a variety of reasons, as follows: (1) Sound value compensation is an unnecessary financial liability borne directly or indirectly by the government; (2) sound value compensation inhibits fair competition in the award of concession contracts; and, (3) sound value compensation impairs the ability of NPS to undertake changes in the location and uses of concession facilities otherwise required for the preservation of park resources and their enjoyment by park visitors.

#### Unnecessary Financial Incentive

As stated, sound value compensation provides a concessioner with compensation for the appreciated value of the improvements it constructs in a park area. Sound value compensation, accordingly, is likely always to be a higher level of compensation than fair value as contained in the new standard contract. Depending on the circumstances under the old standard contract, either NPS or a successor concessioner has the liability to pay the concessioner sound value compensation. For example, NPS must pay sound value compensation if it requires the concessioner to remove and replace an existing facility in which it has a possessory interest, and, a successor concessioner must pay sound value compensation to the previous concessioner as a condition of receiving a concession contract which replaces one containing sound value compensation. Currently, almost all major NPS concession contracts contain sound value possessory interest provisions.

Provisions for sound value possessory interest compensation, accordingly, place direct or indirect financial burdens on the government. As such, as a matter of fiscal prudence and sound contract administration, they should be contained in concession contracts only if necessary in order to attract qualified concessioners or if they otherwise

provide offsetting benefits to the government. NPS considers sound value compensation is not necessary to attract qualified concessioners for the reasons discussed below. Also, as discussed below, NPS considers that sound value compensation, rather than providing offsetting benefits to the government, has detrimental consequences to NPS.

Sound value compensation, in the abstract, is attractive to business persons as they may be expected to seek appreciation in the value of improvements they make. Based on its experience, however, NPS considers that many business persons interested in concession contracts look to the return they expect to make on the revenues of a concession operation over the term of the contract in deciding whether an investment should be made. The possibility of selling buildings at their appreciated value at the expiration of a contract is not as significant a factor. In fact, even under the old standard contract, there is no assurance that the concessioner will receive sound value compensation upon contract expiration or otherwise. For example, under the old standard contract, if the concession operation is to be discontinued upon contract expiration, the concessioner is entitled only to book value compensation.

For these reasons, NPS now does not consider that sound value compensation is needed in order to attract qualified concessioners. A prospective concessioner, of course, does seek to be assured that it will be able to recover the investment it makes in concession buildings. The fair value compensation provision included in the new standard contract achieves this objective. NPS also appreciates that continuity in concession operations is of benefit to NPS and park visitors. In certain circumstances, sound value compensation may encourage continuity in operations. However, the Act contains a specific provision to achieve this objective (the preference in renewal for existing satisfactory concessioners) and NPS considers that the detrimental aspects of sound value compensation as discussed below outweigh any benefit it may provide with respect to continuity of operations.

NPS also notes that, in its experience, lenders generally do not make decisions on loans to concessioners for construction of buildings or otherwise based on an expectation that a concessioner's buildings will appreciate in value due to increased building costs or other external market forces. Rather, lenders generally make concession loans based on an estimate that the net revenues of the business will be

sufficient to repay the loan. Possessory interest in a concession building to be constructed with borrowed funds is used as security for a loan, but, the estimated value of this security generally is based on construction cost, not on an assumption that the value of the concession building will appreciate. In this regard, as discussed above, there is, in fact, no assurance of possessory interest compensation at sound value under the old standard contract. Book value is all that is assured. Lenders presumably are aware of the terms of the old standard contract in this respect and yet frequently make loans to concessioners.

NPS considers that the fair value compensation provisions included in the new standard contract will be more than a sufficient level of compensation to attract qualified concessioners and to induce lenders to make loans to concessioners. The fair value compensation in the new concession contract is, as a practical matter, almost the functional equivalent of a government guarantee that a lender will receive security in an improvement based on actual construction cost less specified depreciation. This may be considered as better security than is obtainable in usual business circumstances as the security provided, although it has a fixed maximum amount, concomitantly has a fixed minimum amount as well. In fact, in terms of potential down-side, it may be considered as better security than sound value possessory interest compensation.

In this connection, NPS notes its recent award of a new concession contract for hotel and other facilities at Yosemite National Park, the largest concession operation in the national park system with the largest sound value possessory interest in the system. NPS, through a public solicitation under which six companies made competitive offers, was able to select a qualified new concessioner for the operations that has agreed to amortize the existing sound value compensation of the former concessioner (worth multiple millions of dollars) over a fifteen year period, and, in addition, to invest over \$100 million dollars in new concession facilities. The contract does not contain sound value compensation provisions, but, rather, consistent with the new standard contract, provides fair value compensation for improvements constructed with concessioner funds and for no possessory interest in improvements constructed with funds from what are the equivalent of the new standard contract's Section 10 accounts.

NPS concessioners that commented on the new standard contract generally

argued that sound value possessory interest compensation is needed in order to attract qualified concessioners. NPS disagrees for the reasons discussed above and points out that it will soon find out whether the terms of the new concession contract are such that qualified businesses generally will accept the new standard contract for park concession operations. If this does not prove to be the case, NPS will alter the new standard contract on a case-by-case basis or generally to the extent needed to procure qualified concessioners. The "marketplace" ultimately will determine the validity of the financial assumptions of the new standard contract.

Comments from concessioners also take the position that concessioners are entitled to sound value compensation under what may be characterized as the principles of free enterprise. This position is based on the proposition that in free enterprise a business person is able to sell a building it constructs for its appreciated value. However, the NPS concession contract program is hardly a free enterprise model. In fact, it contains several features benefiting existing concessioners that are not to be found in a free enterprise system, e.g., the statutory preference in renewal and the effective monopolies exercised by many concession operations with substantial possessory interest. In any event, however, the concept of fair value compensation is very much a "free enterprise" concept. Landlords in the private sector, when leasing property upon which a tenant is to make improvements, for good business reasons seek to include lease provisions that require improvements made by tenants to belong to the landlord upon lease expiration. This "free enterprise" practice is mirrored by the fair value compensation provisions of the new standard contract.

Finally, concessioners argued that the absence of sound value compensation will discourage concessioners from maintaining their buildings as they will no longer be compensated for buildings based in part on their physical condition. There is some logic to this argument, but, it boils down to the proposition that a purpose of sound value compensation is to induce concessioners to maintain their buildings properly. However, such inducement should not be needed as this obligation is otherwise contained in the concession contract, and, moreover, is a matter of good business practice if the concessioner wishes to please its customers and retain its preference in contract renewal as a satisfactory concessioner. NPS will rely on the terms

of the contract and the good business sense of its concessioners to assure that concession buildings are properly maintained.

#### Impairing Fair Competition

Another reason to replace sound value possessory interest compensation is its negative impact on fair competition in concession contracting. By "fair" in this sense, NPS means competition for concession contract renewals under a process which encourages continuity of operations through an existing satisfactory concessioner's right of preference, but, also, which allows a competitor a reasonable opportunity to make and be awarded an offer advantageous to NPS. A balance of these interests is required under the Act. The problem presented by sound value compensation in this regard is that a prospective concessioner seeking to be awarded a contract for an existing concession operation (with a possessory interest) under the present contracting system, is, as a practical matter, required to offer to "buy a pig in a poke" when applying for the contract. This is because sound value compensation, based as it is on the estimated cost to reconstruct a building (or a building's fair market value, whichever is less), is always an unknown dollar amount until the completion of engineering studies and appraisals, and, if necessary, completion of a negotiation or binding arbitration to reconcile differing appraisals. NPS, under the terms of the old standard contract, requires a prospective new concessioner to agree to compensate the existing concessioner for applicable possessory interest at sound value, but, the prospective concessioner does not know at the time it must make this commitment what the amount will eventually turn out to be. Binding arbitration determines the final value.

Needless to say, few business persons submit offers for concession contracts in these circumstances. In fact, to the best of the institutional memory of NPS, a new concessioner has never, either before or after the passage of the Act in 1965, been awarded a concession contract in the place of an existing concessioner which sought contract renewal and had substantial possessory interest assets at the sound value level of compensation. For the most part, NPS does not receive competing offers at all, but, even if received, a competing offer may be expected to be conservative with respect to financial terms of importance to NPS in light of the unknown possessory interest purchase price the offeror faces. The incumbent concessioner, of course, is able to



submit a more favorable offer as it does not have to pay the sound value compensation or estimate the actual dollar amount.

The key elements of the Secretary's reform initiative with respect to enhancing competition in concession contracting are the amendment of NPS concession regulations, accomplished as of October 3, 1992, and the implementation of the new standard contract. Under the new regulations, it is made clear that an incumbent satisfactory concessioner is entitled to a right to meet the terms of a better offer received, but, is also required to be responsive to the contract terms as proposed by NPS. Under the new standard contract, a prospective concessioner will know in advance its liability to the incumbent concessioner for possessory interest compensation. NPS, accordingly, expects to receive more competing offers under the new regulations and new standard contract, and, expects to receive more favorable competing offers, to the ultimate benefit of the national park system.

NPS considers that the new regulations and the change to fair value compensation achieve a proper balance between the desirability of encouraging continuity of operations and the desirability of fair competition. As discussed below, satisfactory incumbent concessioners will still have substantial advantages over competitors in the award of a new concession contract but, the competitive process should no longer be a "rubber stamp" exercise.

#### Resource Preservation

A more subtle but very serious consequence of sound value compensation is the fact that it tends to impede the ability of NPS to make necessary changes in the types and locations of concession facilities in park areas as visitor needs and resource concerns change over time. Under sound value compensation, if NPS wishes to have a concessioner relocate a concession facility (an objective that occurs frequently in light of the prime resource locations of many major concession facilities constructed decades ago), NPS must obtain and pay the concessioner compensation in the amount of the sound value of the structures to be removed. Such compensation can be a very large and increasing sum of money, effectively making difficult or impossible what otherwise may be a necessary step in the preservation of the resources of a park area. NPS, of course, can seek to obtain appropriated funds to provide the required compensation, but, the reality of budget priorities is that funds simply

are not available for all the situations where they may be needed. The shift to fair value compensation and consequent reduction in possessory interest liabilities over time will assist significantly the ability of NPS to carry out its primary mission, the preservation of park resources for their enjoyment by visitors. NPS points out that its concern with sound value possessory interest in this regard is not meant to be a criticism of NPS concessioners, most of which fully share and assist in achieving NPS resource management goals, but, merely reflects economic reality.

These are the reasons why NPS has adopted fair value compensation in the new concession contract. The proposal was supported strongly by environmental groups that commented on the proposal. However, the NPS concessioners that commented, in addition to the business concerns they expressed as discussed above, also argued that the fair value compensation provision in the new standard contract is not authorized by the Act (or, even, that it is unconstitutional as a taking of property without just compensation). NPS has reviewed these positions carefully and disagrees with them.

The general position of the concessioners which asserted a lack of legal authority for the fair value compensation provisions of the new standard contract is their view that the Act in Section 6 "requires" that compensation for possessory interest be at sound value. However, this view overlooks the fact that the Act states that compensation for possessory interest is to be at sound value "unless otherwise agreed by the parties." NPS, of course, cannot enter into a concession contract containing the fair value compensation provision unless the concessioner signing the contract also agrees to it. NPS, however, does acknowledge that the Congress, in deliberating upon the legislation which led to the Act, considered, as a matter of factual expectation, not law, that NPS would continue to include sound value compensation provisions in concession contracts, in part because of the perception of the Congress in 1965 that sound value compensation would be necessary in order to attract investment in concession operations by qualified concessioners. This perception may have been accurate in 1965, but is not considered by NPS to be the case today as discussed above. As stated, NPS considers that it will have no general difficulty in attracting qualified concessioners under the terms of the new concession contract. If it does, it

will revert to sound value compensation as necessary.

In this regard, the legislative history of the Act specifically acknowledges in a number of places the continuing authority of NPS (under the "other use agreed by the parties" phrase of Section 6 of the Act and otherwise) to include possessory interest compensation in concession contracts at other than sound value. For example, Congressman Aspinall, a principal author of the legislation which became the Act, stated as follows in House floor debate (as a rebuttal to a colleague's criticism of sound value compensation):

The Secretary is free (under Section 6) both to require the concessioner to waive any possessory interest he might otherwise have in this sort of improvement (concessioner improvements) and to adapt the valuation formula to suit the circumstances of such improvement as sees fit. (Congressional Record, September 14, 1965 at p. 22787.)

In addition to its clear authority under the Act of contract for possessory interest compensation at other than sound value, NPS also points out that there is nothing new about a provision for less than sound value possessory interest compensation in NPS concession contracts. In fact, each and every NPS concession contract entered into since passage of the Act in 1965 (with possessory interest provisions) has contained terms which limit possessory interest compensation to less than sound value in certain circumstances. For example, it has always been NPS policy under the Act and the old standard contract to provide book value compensation when a concession facility is no longer used for concession operations. In addition, NPS implemented, shortly after passage of the Act, a policy still reflected in both the old and the new standard contracts, to the effect that possessory interest compensation in government buildings improved by a concessioner is at book value. This latter policy was adopted formally in 1979 after public notice and opportunity for comment on the then new standard language concession contract.

In short, the commenters cannot reconcile their position that the Act does not authorize anything but sound value compensation with the administrative practice of NPS under the Act. In this connection, NPS also notes that all concession contracts grossing more than \$100,000 are required to be submitted to Congress for a sixty day period prior to execution. In order for the commenters' to sustain the validity of their legal position, they would have to argue that Congress has chosen to ignore the fact that each and

every concession contract submitted to the Congress since 1965 (with possessory interest provisions) is illegal under the Act.

One commenter did acknowledge the "unless otherwise agreed to by the parties" phrase of section 6 of the Act. The commenter, however, tried to explain this phrase away by arguing that the phrase means that a potential concessioner for a new concession contract has a right to agree or disagree "in advance" to a contract which does not contain sound value compensation. The Act, of course, simply does not read this way. Further, it is self-evident that no one is required to apply for an NPS concession contract if he or she disagrees with the terms of the contract. In fact, it appears that this "advance agreement" legal argument, if carried to its logical conclusion, would mean that a third party somehow has a right to veto the inclusion of a less than sound value compensation provision in a concession contract which otherwise has been agreed to by both parties to the contract, NPS and the selected concessioner. NPS does not believe that the Act can be read to achieve this anomalous result.

Although NPS considers that it has legal authority to adopt the fair value compensation provision, it does not seek to deprive existing concessioners which are entitled to sound value compensation the full measure of compensation due under existing contracts or to deprive existing concessioners of a fair opportunity to apply for a new contract. In this regard, NPS will include in each concession solicitation utilizing the new standard contract its estimate, where applicable, of the value of an existing concessioner's possessory interest and require the successful applicant (if it is not the existing concessioner) to pay the existing concessioner all possessory interest compensation (including sound value and book value, as applicable) and other compensation due the existing concessioner under the expired contract. If the existing concessioner chooses to seek to continue its operations under the new contract, it will be entitled to apply for the new contract containing the fair value compensation provision, and, if it is a satisfactory concessioner, it will have a right of preference in the new contract in accordance with the Act and 36 CFR part 51.

In either circumstance, the specific amount of money to be included in the new contract with respect to existing sound value possessory interest will be calculated in accordance with the terms of the expired contract. If this amount

should change as a result of a required arbitration or otherwise, NPS will make appropriate adjustments to the terms of the new contract to reflect the adjusted actual dollar value of the existing sound value compensation.

Existing concessioners may argue that it is not within the authority of NPS to propose a contract which, in effect, requires an incumbent concessioner to amortize its sound value possessory interest under its terms. NPS, however, has carefully considered this argument and considers it to be unpersuasive. In the first instance, although an existing satisfactory concessioner has a right of preference to a new contract, this right does not extend to setting the terms of a new contract with respect to possessory interest compensation or otherwise. NPS has the statutory responsibility to establish such terms in fulfillment of its obligations to preserve areas of the national park system and to provide for their enjoyment by park visitors.

In any event, however, an existing concessioner in fact has the choice under the new standard contract either to agree to the terms of the new contract as offered equally to all applicants, or, to obtain immediately the full compensation which is due under the expired contract. In this regard, NPS points out that the overall financial benefits of a new concession contract, will be, as a matter of business necessity, at least equal to the compensation due an incumbent concessioner under an expired contract, or else, no one, including the incumbent concessioner, will make a responsive offer for the new contract. NPS, to this end, will take into account in its internal decisions regarding proposed contract terms (e.g., building programs, term, franchise fees, etc.) the economic consequences of amortizing existing sound value possessory interest as required by the new standard contract. A new concessioner will not offer to pay the existing concessioner the sound value and other compensation due under the expired contract and thereafter amortize this expense as required by the new standard contract unless the terms of the new contract are considered attractive enough to warrant such payments as a matter of business judgment. In fact, the incumbent concessioner has substantial advantages over competitors in this regard because the incumbent is not required to pay cash up front for the sound value compensation (as is a new concessioner), and, the incumbent will have a better estimate of the value of the new contract because of its detailed

knowledge of past expenses and revenues.

An example of this is as follows. If an existing concessioner has sound value possessory interest in the amount of \$1,000,000, a fifteen year new contract proposal would state that compensation for this existing possessory interest is initially set at \$1,000,000 and will decrease by one thirtieth each year of the contract. If a new concessioner is awarded this contract, it would be required to pay the existing concessioner the \$1,000,000 up front (in accordance with the expired contract) and would then amortize this payment under the terms of the new contract. If an existing concessioner is awarded the contract, this amount likewise would be amortized under the terms of the new contract. At the expiration of the fifteen year contract, accordingly, one-half of the initial amount would be due the concessioner if it is not awarded a subsequent new contract. Under a subsequent new fifteen year contract, the concessioner thereunder would amortize the balance of the initial \$1,000,000.

In summary, under the new standard contract, an incumbent concessioner with existing sound value possessory interest either may obtain immediate full payment for this interest, or, may seek to enter into a new concession contract which is intended through its terms to compensate the concessioner, whether a new concessioner or the existing concessioner, for the amortization of the existing possessory interest and provide, taking the amortization into account, a reasonable opportunity for profit. The existing concessioner is given the choice in this regard, and, the liability of the government thereafter to pay sound value compensation (and related detrimental consequences) is eliminated as required in the public interest.

Several commenters also questioned the validity of the optional Section 10 account provisions of the new standard contract which do not provide possessory interest in improvements constructed with funds from Section 10 accounts. As a legal matter, the Act allows for the assignment, transfer or extinguishment of possessory interest and thus the section 10 provision is lawful for the same reasons as discussed above with respect to fair value compensation. NPS also notes that commenters generally accepted the fairness of this Section 10 account limitation with respect to possessory interest. In fact, the provision is of economic benefit to concessioners as they will profit from the use of improvements constructed with funds

from the accounts which otherwise may be an expense to the concessioner under the contract (e.g., increased franchise or building use fees) without corresponding benefit.

NPS finally notes in connection with section 13 that it received a comment which stated that section 13(d) is confusing because it appears that it merely restates Section 13(d). In this regard, section 13(f) is included in the new standard contract by NPS pursuant to statutory requirements. However, section 13(d) has been modified to be consistent with the intentions of the fair value provisions of the new standard contract and statutory requirements.

#### *Section 14—Assignment or Sale of Interests*

Several commenters asserted generally that section 14 is contrary to the principles of free enterprise, as it restricts a concessioner's ability to sell its business. NPS disagrees. This provision properly allows NPS to carry out its duty of ensuring that assignees of concessions contracts are capable of conforming to NPS's policies and procedures and that the terms of a concession contract, upon transfer, will continue to reflect the probable value of the privileges granted by the contract so that the interests of the government are protected. The fundamental premise of Section 14, as reflected in both the old and new standard contracts, is that there is no inherent right to assign or sell to a third party the rights and obligations of a government contract. This concept is not new. It has been in effect since well before the passage of the 1965 Act. Section 14 as proposed has been amended to reflect the related requirements of 36 CFR part 51.

One commenter stated that NPS approval of a sale or transfer should not be unreasonably withheld. This is present NPS policy, and does not change under the new standard contract.

#### *Section 15—Approval of Subconcession Contracts*

One commenter objected to this section, claiming that the Act does not allow subconcessioners to operate concession facilities and services. NPS believes that the Act authorizes subconcessioners, and, although NPS generally discourages subconcessioners, it has allowed their operation in certain circumstances for many years.

#### *Section 17—Procurement of Goods, Equipment and Services*

One commenter urged that this section specify that if NPS determines that a diversion or concealment of

profits has occurred, the concessioner is to be terminated immediately. NPS disagrees with this suggestion. All diversions or concealments are not alike. Those that are unintentional or of a minor nature may not warrant immediate termination. Others, however, may deserve this action. For this reason, NPS needs the flexibility in the language of this section to take whatever action may be appropriate in these circumstances.

#### *The Former "Disputes" Section*

Several commenters objected to the removal of the "Disputes" section from the old standard contract. They considered, essentially, that this section is necessary to protect the rights of concessioners. NPS disagrees. The "Disputes" Section was deleted from the contract because independent statutory provisions now achieve the purposes of the Disputes clause.

NPS has determined that this document is categorically excluded from the NEPA process pursuant to applicable Departmental and NPS guidelines. NPS, in light of comments received regarding the fair value compensation provision, also reviewed this document in connection with the policies and criteria of Executive Order No. 12630 and has determined, for the reasons discussed above, that this document is consistent with applicable provisions of the Executive order.

Dated: December 30, 1992.

James M. Ridenour,  
Director, National Park Service.

#### **Standard Language To Be Used, Where Applicable in Concession Contracts**

United States Department of the Interior, National Park Service

(Name of Concessioner)

(Name of Area)

Contract No. \_\_\_\_\_

Executed \_\_\_\_\_

Covering the Period \_\_\_\_\_

Through \_\_\_\_\_

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#### **Corporation**

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and \_\_\_\_\_ a corporation organized and existing under the laws of the State of \_\_\_\_\_ doing business as \_\_\_\_\_ hereinafter referred to as the "Concessioner":

#### **Partnership**

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ partners,

doing business as \_\_\_\_\_, pursuant to a partnership agreement dated \_\_\_\_\_ with the principal place of business at \_\_\_\_\_, hereinafter referred to as the "Concessioner":

#### **Sole Proprietorship**

THIS CONTRACT made and entered into by and between the United States of America, acting in this matter by the Secretary of the Interior, through the Director of the National Park Service, hereinafter referred to as the "Secretary," and \_\_\_\_\_ an

individual of \_\_\_\_\_, doing business as \_\_\_\_\_, hereinafter referred to as the "Concessioner"

**Witnesseth**

That whereas, (Name of Park, Recreation Area, etc.) (hereinafter referred to as the "Area") is administered by the Secretary to conserve the scenery and the natural and historic objects and the wildlife therein, and to provide for the public enjoyment of the same in such manner as will leave such area unimpaired for the enjoyment of future generations; and

Whereas, the accomplishment of these purposes requires that facilities and services that have been determined to be necessary and appropriate for the public use and enjoyment of the area be provided for the public visiting the area; and

Whereas, the United States has not itself provided such necessary facilities and services and desires the Concessioner to establish and operate certain of them at reasonable rates under the supervision and regulation of the Secretary; and

Whereas, pursuant to law the Secretary is required to exercise his authority hereunder in a manner consistent with a reasonable opportunity by the Concessioner to realize a profit on the operations conducted hereunder as a whole commensurate with the capital invested and the obligations assumed:

Now, Therefore, pursuant to the authority contained in the Acts of August 25, 1916 (39 Stat. 535; 16 U.S.C. 1, 2-4), and October 9, 1965 (79 Stat. 969; 16 U.S.C. 20 et seq.) and other laws supplemental thereto and amendatory thereof, the Secretary and the Concessioner agree as follows:

Sec. 1. Term of Contract (a) This Contract shall [supersede and cancel Contract No. \_\_\_\_\_ effective upon the close of business \_\_\_\_\_ 19\_\_\_\_, and shall] <sup>1</sup> be for the term of \_\_\_\_\_ (\_\_\_\_) years from \_\_\_\_\_, 19\_\_\_\_, <sup>2</sup> [conditioned upon the Concessioner's completion of the improvement and building program set forth in subsection (b) hereof. In the event the Concessioner fails to complete this program to the satisfaction of the Secretary within the time allotted therefor, then this Contract shall be for the term of \_\_\_\_\_ (\_\_\_\_) years from \_\_\_\_\_.]

<sup>1</sup> To be used when existing contract is to be replaced, before expiration date.

<sup>2</sup> To be used where there is an improvement and building program. The shortened term of contract should generally not exceed 10 years.

(b)<sup>3</sup> The Concessioner shall undertake and complete an improvement and building program (hereinafter "Improvement Program") costing not less than \$\_\_\_\_\_ as adjusted per project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Commerce's "Construction Review." It is agreed that such investment is consistent with Section 3(a) hereof. The Improvement Program shall include:

(Provide detailed description of the Improvement Program.)

(c) The Concessioner shall commence construction under the Improvement Program on or before \_\_\_\_\_ in such a manner as to demonstrate to the satisfaction of the Secretary that it is in good faith carrying the Improvement Program forward reasonably under the circumstances. After written approval of plans and specifications, the Concessioner shall provide the Secretary with such evidence or documentation, as may be satisfactory to the Secretary, to demonstrate that the Improvement Program duly is being carried forward, and shall complete and have the improvements and buildings available for public use on or before \_\_\_\_\_.

(d) The Concessioner may, in the discretion of the Secretary, be relieved in whole or in part of any or all of the obligations of the Improvement Program for such stated periods as the Secretary may deem proper upon written application by the Concessioner showing circumstances beyond its control warranting such relief.

(e) In addition to the Improvement Program described above, the Concessioner shall accomplish such additional improvement projects as may be funded from the account(s) established in Section 10 hereof.

Sec. 2. Accommodations, Facilities and Services (a) The Secretary hereby requires and authorizes the Concessioner during the term of this Contract to provide accommodations, facilities and services for the public within the Area, as follows:

(Provide detailed description of services which are required and/or only authorized to be undertaken. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used. A provision stating "The Concessioner

may provide services incidental to the operations authorized hereunder at the request of the Secretary" is acceptable.)

(b) The Secretary reserves the right to determine and control the nature, type and quality of the merchandise and services described herein to be sold or furnished by the Concessioner within the Area.

(c) This Contract and the administration of it by the Secretary shall be subject to the law of Congress governing the Area and rules, regulations and policies promulgated thereunder, whether now in force or hereafter enacted or promulgated, including but not limited to United States Public Health Service requirements. The Concessioner must also comply with applicable requirements promulgated by the United States Department of Labor's Occupational Safety and Health Act of 1970 (OSHA) and those provisions contained in the National Park Service's Safety and Occupational Health Policy associated with visitor safety and health.

(d) In order to implement these requirements the Secretary, acting through the Superintendent and in consultation with the Concessioner, shall establish and revise as circumstances warrant, specific operating requirements in the form of an Operating Plan which shall be adhered to by the Concessioner. The Operating Plan established by the Superintendent shall not amend or alter the material rights and liabilities of the parties to this Contract.

Sec. 3. Plant, Personnel and Rates (a)(1) The concessioner shall maintain and operate the accommodations, facilities and services described above to such extent and in such manner as the Secretary may deem satisfactory, and shall provide the plant, personnel, equipment, goods, and commodities necessary therefor, provided that the Concessioner shall not be required to make investments inconsistent with a reasonable opportunity to realize a profit on its operations under this Contract commensurate with the capital invested and the obligations assumed. The Concessioner agrees that the terms of this Contract provide the Concessioner this reasonable opportunity to realize a profit.

(a)(2) All rates and prices charged to the public by the Concessioner for accommodations, services or goods furnished or sold shall be subject to regulation and approval by the Secretary. Reasonableness of rates and prices will be judged generally by comparison with those currently charged for comparable

<sup>3</sup> (b), (c) and (d) Are to be used where improvement programs are included in the contract. Note: Do not use Sec. 1, (b), (c) or (d), if there is no building program.

accommodations, services or goods furnished or sold outside of the areas administered by the National Park Service under similar conditions, with due allowance for length of season, provision for peak loads, [average percentage of occupancy]<sup>4</sup> accessibility, availability and cost of labor and materials, type of patronage, and other conditions customarily considered in determining charges, but due regard may also be given to such other factors as the Secretary may deem significant.

(a)(3) The Concessioner shall require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner may, subject to the prior approval of the Secretary, grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted hereunder. The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services in accordance with procedures established by the Secretary.

(b)(1) The Concessioner may be required to have its employees who come in direct contact with the public, so far as practicable, to wear a uniform or badge by which they may be known and distinguished as the employees of the Concessioner. The Concessioner shall require its employees to exercise courtesy and consideration in their relations with the public.

(b)(2) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Secretary to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(b)(3) The Concessioner shall, in addition to other laws and regulations which may be applicable to its operations, comply with applicable requirements of (i) Title VII of the Civil Rights Act of 1964, as well as Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, (ii) Title V, sections 503 and 504 of the Rehabilitation Act of September 26, 1973, Public Law 93-112 as amended in 1978, (iii) 41 CFR part 60-2 which prescribes affirmative action requirements for contractors and subcontractors, (iv) the Age Discrimination in Employment Act of December 15, 1967 (Pub. L. 90-202), as amended by (Pub. L. 95-256) of April 6,

1978, and (v) the Architectural Barriers Act of 1968 (Pub. L. 90-480). The Concessioner shall also comply with regulations heretofore or hereafter promulgated, relating to nondiscrimination in employment and providing accessible facilities and services to the public including those set forth in Exhibit "A" attached hereto and made a part hereof.

**Sec. 4. Government Land and Improvements** (a)(1) The Secretary hereby assigns for use by the Concessioner during the term of this Contract, certain parcels of land, if any (as described in Exhibit "B" hereto), and Government Improvements, if any (as described in Exhibit "C" hereto), appropriate to conduct operations hereunder.

(a)(2) The Secretary reserves the right to withdraw such assignments or parts thereof at any time during the term of this Contract if, in his judgement, (i) such withdrawal is for the purpose of enhancing or protecting area resources or visitor enjoyment or safety, or (ii) the operations utilizing such assigned lands or buildings are terminated pursuant to Section 12 hereof.

(a)(3) Any permanent withdrawal of assigned lands or Government Improvements which are essential for conducting the operation authorized hereunder will be considered by the Secretary as a termination of this Contract pursuant to Section 12 hereof. The Secretary shall compensate the Concessioner for any Possessory Interest it may have in such properties permanently withdrawn pursuant to section 13 hereof.

(b)(1) "Government Improvements" as used herein, means the buildings, structures, utility systems, fixtures, equipment, and other improvements affixed to or resting upon the lands assigned hereunder in such manner as to be part of the realty, if any, constructed or acquired by the Secretary and assigned to the Concessioner by the Secretary for the purposes of this Contract.

(b)(2) The Concessioner shall have a Possessory Interest to the extent provided elsewhere in this Contract in capital improvements (as hereinafter defined) it makes to Government Improvements (excluding improvements made from funds from any Section 10 accounts) with the written permission of the Secretary. In the event that such Possessory Interest is acquired by the Secretary or a successor concessioner at any time, the Concessioner will be compensated for such Possessory Interest pursuant to section 13 hereof.

(c) The Secretary shall have the right at any time to enter upon the lands and

improvements utilized by the Concessioner hereunder for any purposes he may deem reasonably necessary for the administration of the Area.

(d) The Concessioner may construct or install upon assigned lands such buildings, structures, and other improvements as are necessary for operations hereunder, subject to the prior written approval by the Secretary of the location, plans, and specifications thereof. The Secretary may prescribe the form and contents of the application for such approval. The desirability of any project as well as the location, plans and specifications thereof will be reviewed in accordance with applicable provisions of the National Environmental Policy Act of 1969 and the National Historic Preservation Act of 1966, among other requirements.

(e) If, during the term of this Contract, a Government Improvement requires capital improvement (major repairs and/or improvements that serve to prolong the life of the Government Improvement to an extent requiring capital investment for major repair), such capital improvements shall be made by the Concessioner at its expense if consistent with a reasonable opportunity for the Concessioner to realize a profit as described above. Where capital improvements to other Government facilities which directly support the Concessioner's operations under this Contract are determined by the Secretary to be necessary for the accommodation of Area visitors, such improvements shall be made by the Concessioner at its expense unless the Secretary determines that expenditures for such improvements are inconsistent with a reasonable opportunity for the Concessioner to realize a profit as described above.

**Sec. 5. Maintenance** (a) Subject to section 4(e) hereof, the Concessioner will physically maintain and repair all facilities (both Government Improvements and Concessioner Improvements) used in operations under this Contract, including maintenance of assigned lands and all necessary housekeeping activities associated with such operations, to the satisfaction of the Secretary.

(b) In order to implement these requirements, the Secretary, acting through the Superintendent, shall undertake appropriate inspections, and, in consultation with the Concessioner, shall establish and revise as circumstances warrant a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. However, such Maintenance Plan shall not amend or

<sup>4</sup> This should be used only in contracts involving lodging.

over the material rights and liabilities of the parties to this Contract.

Sec. 6. Concessioner's Improvements (a)(1) "Concessioner Improvements," as used herein, means buildings, structures, fixtures, equipment, and other improvements, affixed to or resting upon the lands assigned hereunder in such manner as to be a part of the realty, provided by the Concessioner for the purposes of this Contract (excluding improvements made to Government Improvements and improvements made from funds in any Section 10 accounts), as follows: (i) Such improvements upon the lands assigned at the date hereof as described in Exhibit "D" hereto; and (ii) all such improvements hereafter constructed upon or affixed to the lands assigned to the Concessioner with the written consent of the Secretary.

(a)(2) Concessioner Improvements do not include any interest in the land upon which the improvements are located.

(a)(3) Any salvage resulting from the authorized removal, severance or demolition of a Concessioner Improvement or any part thereof shall be the property of the Concessioner.

(a)(4) In the event that a Concessioner Improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Secretary, restore the site as nearly as practicable to its original condition.

(b)(1) The Concessioner shall have a Possessory Interest, as defined herein, in Concessioner Improvements to the extent provided by the Contract.

(b)(2) Possessory Interest in Concessioner Improvements or Government Improvements shall not be extinguished by the expiration or other termination of this Contract, and may not be terminated or taken for public use without just compensation as determined in accordance with Section 13. Performance of the obligations assumed by the Secretary under Section 13 hereof shall constitute just compensation with respect to the taking of Possessory Interest.

(c)(1) Possessory Interest, as the term is used in this Contract, shall consist of all incidents of ownership in capital improvements made by the Concessioner, except legal title which shall be vested in the United States and subject to other limitations as set forth in this Contract. Particularly, among other matters, the existence of Possessory Interest shall not be construed to include or imply any authority, privilege, or right to operate

or engage in any business or other activity, and the use or enjoyment of any structure, fixture or improvement in which the Concessioner has a Possessory Interest shall be wholly subject to the applicable provisions of this Contract and to the laws and regulations relating to the Area.

Sec. 7. Utilities (a) The Secretary may furnish utilities to the Concessioner for use in connection with the operations authorized under this Contract when available at reasonable rates to be fixed by the Secretary in his discretion. Such rates which shall at least equal the actual cost of providing the utility or service unless a reduced rate is provided for in an established policy of the Secretary in effect at the time of billing.

(b) Should the Secretary not provide such utilities, the Concessioner shall, with the written approval of the Secretary and under such requirements as the Secretary shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the same within the Area with the written permission of the Secretary, subject to the following conditions:

(i) Any water rights deemed necessary by the Concessioner for use of water on Federal lands shall be acquired at its expense in accordance with applicable State procedures and law. Such water rights, upon expiration or termination of this Contract for any reason shall be assigned to and become the property of the United States without compensation;

(ii) Any utility service provided by the Concessioner under this Section shall, if requested by the Secretary, be furnished to the Secretary to such extent as will not unreasonably restrict anticipated use by the Concessioner. The rate per unit charged the Secretary for such service shall be approximately the average cost per unit of providing such service; and

(iii) All appliances and machinery to be used in connection with the privileges granted in this Section, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Secretary.

Sec. 8. Accounting Records and Reports (a) The Concessioner shall maintain an accounting system whereby its accounts can be readily identified with its system of accounts classification. The Concessioner shall submit annually as soon as possible but not later than \_\_\_\_\_ day of \_\_\_\_\_ a financial statement for the preceding year or portion of a year as prescribed by the Secretary, and such

other reports and data, including, but not limited to, operations information, as may be required by the Secretary. Such information are subject to public release to the extent authorized by law or established policies and procedures of the Secretary. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Report Form issued by the Secretary. If the annual gross receipts of the Concessioner are in excess of \$1,000,000, the financial statements shall be audited by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are between \$250,000, and \$1,000,000, the financial statements shall be reviewed by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970, in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountants. If annual gross receipts are less than \$250,000, the financial statements may be prepared without involvement by an independent certified or licensed public accountant, unless otherwise directed by the Secretary.

If the Concessioner is required to have its annual financial statement (Concessioner Annual Financial Report) audited or reviewed, the Concessioner must use the accrual accounting method. In addition, it must include in its annual financial statement (Concessioner Annual Financial Report) a footnote that reconciles its annual financial statement to its Federal income tax returns.

(b) <sup>5</sup> Within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner shall submit to the Secretary a balance sheet as of the beginning date of the term of this Contract. The balance sheet shall be audited by an independent certified public accountant or by an independent licensed public accountant, certified or licensed by a regulatory authority of a

<sup>5</sup> Optional Subsection 8(b), in its entirety, may be excluded where the Concessioner has no acquired possessory interest assets involved and no balance sheet is required.



State or other political subdivision of the United States on or before December 31, 1970. The balance sheet shall be accompanied by a schedule that identifies and provides details for all assets in which the Concessioner claims a Possessory Interest. The schedule must describe these assets in detail showing for each such asset the date acquired, useful life, cost and book value.

(c) The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall at any time up until the expiration of five (5) calendar years after the expiration of this Contract, have access to and the right to examine any of the Concessioner's pertinent books, documents, papers, and records, including Federal and State income tax returns (collectively "documents"), and such documents of any subconcessioner related to this Contract, and, such documents of any proprietary or affiliate companies of the Concessioner.

**Sec. 9. Fees** For the term of this Contract, the Concessioner shall pay to the Secretary for the privileges granted herein, fees as follows:

(a)(1)<sup>6</sup> An annual fee for the use of Government Improvements assigned to the Concessioner, if any. Such fee and related Government Improvement shall be identified in Exhibit "C" hereto, and the fee may be adjusted annually by the Secretary to equal the fair annual value of the related Government Improvement as determined by the Secretary.

(a)(2) In addition to the foregoing, a franchise fee equal to \_\_\_\_\_ percent (\_\_\_\_%) of the Concessioner's gross receipts, as herein defined, for the preceding year or portion of a year.

(b) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that payment shall be received by the Secretary within 15 days after the last day of each month that the Concessioner operates. Such monthly payment shall include the annual use fee for assigned Government Improvements, as set forth in Exhibit "C" hereto, divided by the expected number of operating months, as well as the specified percentage of gross receipts for the preceding month. The payment of any additional amounts due at the end of the operating year as a result of adjustments shall be paid at the time of submission of the Concessioner's annual financial statement. Overpayments shall be offset

<sup>6</sup> This subsection should be used if a building use fee is to be charged. If a special account is to be established under section 10(a) in lieu of a building use fee, this subsection should be deleted.

against the following year's franchise fees due. All franchise fee payments consisting of \$10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) An interest charge will be assessed on overdue amounts for each 30-day period, or portion thereof, that payment is delayed beyond the 15-day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual.

(d)(1) The term "gross receipts" as used in this Contract shall be mean the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, including gross receipts of subconcessioners as herein defined and commissions earned on contracts or agreements with other persons or companies operating in the Area, and excluding gross receipts from the sale of genuine United States Indian and native handicraft, intracompany earnings on account of charges to other departments of the operation (such as laundry), charges for employees' meals, lodgings, and transportation, cash discounts on purchases, cash discounts on sales, returned sales and allowances, interest on money loaned or in bank accounts, income from investments, income from subsidiary companies outside of the Area, sale of property other than that purchased in the regular course of business for the purpose of resale, and sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies,<sup>7</sup> and amounts received as a result of an add-on to recover utility costs above comparable utility charges. All monies paid into coin operated devices, except telephones, whether provided by: the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts.

<sup>7</sup> Note to Preparer: This means, for example, if fishing licenses are sold, \$2.00 goes to State or Federal agency, \$.25 goes to Concessioner. Only \$2.00 can be excluded from gross receipts, i.e. fishing license cost to user \$2.00 but concessioner sells them and charges \$.25 for services.

(d)(2) The term "gross receipts of subconcessioners" as used in this Contract shall mean the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever and the subconcessioner shall report the full amount of all such receipts to the Concessioner within 45 days after the \_\_\_\_\_ day of \_\_\_\_\_ each year or portion of a year. Subconcessioners shall maintain an accurate and complete record of all items listed in Subsection (d)(1) of this Section as exclusions from the Concessioner's gross receipts and shall report the same to the Concessioner with the gross receipts. The Concessioner shall be entitled to exclude items listed in subsection (d)(1) in computing the franchise fee payable to the Secretary as provided for in subsection (a) hereof.

(e)(1) Immediately following the end of \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, year of this Contract, the amount and character of the franchise fees described in this Section and/or contributions to any accounts described in Section 10 hereof (Section 10 contributions) shall be reconsidered for a period of one hundred and eighty (180) days. During this reconsideration period, the Secretary or the Concessioner may propose adjustments to such franchise fees and/or section 10 contributions (which shall reflect their position as to the then current probable value of the privileges granted by this Contract based upon a reasonable opportunity for profit in relation to both gross receipts and capital invested) by mailing written notice to the other party of such proposal before the end of the reconsideration period. If no such notices are duly mailed, the reconsideration shall end and the fees and contributions shall remain the same until the occurrence of the next reconsideration period.

(e)(2) If the Secretary or the Concessioner duly makes a proposal to adjust the franchise fees and/or Section 10 contributions before the end of the reconsideration period, they shall, commencing the day after the end of the reconsideration period, undertake a good faith negotiation of the proposal. If such negotiation does not result in an agreement as to adjustments to the fees and/or contributions within sixty (60) days of its commencement, this negotiation period shall end and any adjustments determined by the Secretary as of that time shall go into effect, provided that, the Concessioner

may extend this negotiation period by appealing such adjustments to the Secretary. Such appeal must be received by the Secretary within thirty (30) days after the end of the sixty day negotiation period. The appeal must be in writing and include the Concessioner's detailed position as to the validity of such adjustments to the fees and/or contributions. The Secretary, acting through a designee other than the official who determined the adjustments from which the Concessioner duly has appealed, shall consider the position of the Concessioner and related documents as appropriate, and, if applicable, the written views of the mediator as described below. The Secretary shall then make a written final determination of appropriate adjustments to franchise fees and/or Section 10 contributions consistent with the probable value to the concessioner of the privileges granted by this contract based upon a reasonable opportunity for profit in relation to both gross receipts and capital invested. This final determination, or, where applicable, a determination as to adjustments made at the end of the sixty day negotiation period described above from which the Concessioner fails to timely appeal, shall be conclusive and binding upon the parties to this Contract.

(e)(3) Adjustments to franchise fees and/or Section 10 contributions resulting from the process described herein shall be retroactive to the commencement of the applicable contract period for which a notice of reconsideration was given. Payments or contributions made in arrears shall include interest at a per cent based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The adjustments shall also be effective for the remaining term of this Contract, subject to the results of any further reconsideration periods. If an adjustment to franchise fees and/or Section 10 contributions results in higher fees and/or contributions, the Concessioner will pay all back franchise fees due (with applicable interest) and make all section 10 contributions due (with applicable interest) at the time of the next regular franchise fee payment or Section 10 contribution respectively. If an adjustment results in lower fees and/or contributions, the Concessioner may withhold the difference from future franchise fee payments or Section 10 contributions until the Concessioner has recouped the overpayment. Adjustments to franchise fees and/or section 10 contributions will be embodied in an amendment to this Contract unless

resulting from a determination of the Secretary without the agreement of the Concessioner in which event a copy of such determination shall be attached to this Contract and become a part hereof as if originally incorporated herein. During the pendency of the process described herein, the Concessioner shall continue to make the established franchise fee payments and/or Section 10 contributions required by this Contract.

(e)(4) In connection with an appeal to the Secretary hereunder, the Concessioner may request mediation of appropriate adjustments to franchise fees and/or Section 10 contributions by providing a written request for mediation with its appeal to the Secretary as described above. The mediation will be conducted by the American Arbitration Association (AAA) or a similar organization chosen by the Secretary and take place in Washington, DC. The purpose of the mediation shall be to provide for the Secretary's consideration during such appeal the views of the mediator as to appropriate adjustments of franchise fees and/or Section 10 contributions consistent with the probable value to the Concessioner of the privileges granted by this Contract based upon a reasonable opportunity for profit in relation to both gross receipts and capital invested. The written views of the mediator shall be provided to the Secretary within ninety (90) days of the request for mediation unless, because of extenuating circumstances, the Secretary determines that an extension of this time period is warranted. If such views are not provided within this time period (or a duly extended time period), the advisory mediation shall terminate and the Secretary shall make a determination on the appeal as if the mediation had not been requested. The Concessioner and the Secretary shall cooperate in good faith to permit the views of the mediator to be provided within the applicable time period. The Secretary and the Concessioner shall share equally the costs of the services of the mediator and the mediation organization. The views of the mediator are advisory only.

(e)(5) The mediator shall be selected by agreement between the Concessioner and the Secretary from a list provided by the mediation organization within ten (10) days of receipt. Promptly following the selection, the Secretary shall schedule a date for the mediation meeting to take place at which time the written positions of the Concessioner and the Secretary shall be presented to the mediator along with appropriate oral presentations unless advance

submissions are agreed upon. The mediator shall not have the power to compel the production of documents or witnesses and shall not receive or take into account information or documents concerning positions taken by the Concessioner or the Secretary in the negotiations which preceded the request for mediation. The mediator shall consider the written submissions and any oral presentations made and provide his or her written views as described above to the Secretary within ninety (90) days of the request for mediation, or, if applicable, by the last day of a duly extended time period.

Sec. 10. Accounts [Two alternatives are presented for Section 10.]

\* No Government Improvement or Capital Improvement Accounts are included in this Contract. [or]

(a) Government Improvement Account \* (1) As consideration for the use and occupancy of Government Improvements herein provided, the Concessioner shall establish and manage a "Government Improvement Account." The funds in this account belong to the Concessioner, including interest earned thereon, but will be used by the Concessioner only to undertake on a project basis repairs and improvements to Government Improvements listed in Exhibit "C" to this Contract, as directed by the Superintendent in writing and in accordance with project priorities established by the Regional Director of the National Park Service. Expenditures from this account for repair and/or improvement projects in excess of \$1,000,000 must receive the written approval of the National Park Service Director.

(a)(2) Projects paid for from the Government Improvement Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as otherwise required by this Contract from Concessioner funds exclusive of funds contained in the Government Improvement Account, and, specifically, funds from such account shall not be used for the purposes of fulfilling the Concessioner's obligations under Sections 4 and 5 of this Contract. The Concessioner shall have no ownership, Possessory Interest, or other interest in improvements made

\* This subsection should be used only when no special accounts are included in the contract.

\* To be used in lieu of building use fee requirement in Section 9(a)(1) if a special account is to be established.



from funds from the Government Improvement Account.

(a)(3) The Concessioner shall deposit within fifteen (15) days after the last day of each month a sum equal to one-twelfth of the amount of the Government Improvement Account Allocation as established in Exhibit "C" into an interest bearing account(s) at a Federally insured financial institution(s). The account(s) shall be maintained separately from all other Concessioner funds, and, copies of monthly account statements shall be provided to the Secretary. The Concessioner shall submit annually, no later than \_\_\_\_\_ of the year following the Concessioner's accounting year, a statement reflecting total activity in the Government Improvement Account for the preceding accounting year. The statement shall reflect monthly credits, expenses by project, and the interest earned. The balance in the Government Improvement Account shall be available for projects in accordance with the account's purpose. Advances or credits to the account by the Concessioner will not be allowed. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing in advance of any expenditure being made. For all expenditures made for each project from the account, the Concessioner shall maintain auditable records including invoices, billings, cancelled checks, and other documentation satisfactory to the Secretary. An interest charge will be assessed on overdue deposits for each thirty (30) day period, or portion thereof, that the deposit is delayed beyond the fifteen (15) day period provided for herein. The per cent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in the Treasury Fiscal Requirements Manual.

(a)(4) Upon the expiration or termination of this Contract, or upon assignment or sale of interests related to this Contract, the unexpended balance remaining in the Government Improvement Account shall be expended by the Concessioner for approved projects, or, shall be remitted by the Concessioner to the Secretary in such a manner that payment shall be received by the Secretary within fifteen (15) days after the last day of the Concessioner's operation. Any payment consisting of \$10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communications System. An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen

(15) day period provided for herein. The percent of interest charged will be based on the then current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

(b) Capital Account (1) As partial consideration for the privileges granted by this Contract, the Concessioner shall establish a "Capital Account" by which it will undertake, on a project basis, improvements which directly support the Concessioner's operations hereunder. Funds in the Capital Account, including interest earned thereon, belong to the Concessioner but shall be used by the Concessioner only for construction of qualified improvements approved by the Superintendent in accordance with priorities established by the National Park Service Regional Director. Projects estimated to cost over \$1,000,000 must be approved by the Director.

(b)(2) Improvements paid for with funds from the Capital Account will not include routine, operational maintenance of facilities or housekeeping activities. Nothing in this Section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Government Improvements as required by Sections 4 and 5 of this Contract, or otherwise, from Concessioner funds exclusive of those funds contained in the Capital Account. Funds in the Capital Account shall not be used for purposes for which those Sections would apply. The Concessioner shall have no ownership, Possessory Interest or other interest in improvements made from Capital Account funds.

(b)(3) The Concessioner shall deposit within fifteen (15) days after the last day of each month that the Concessioner operates a sum ("SUM") equal to \_\_\_\_\_ Percent (\_\_\_\_%) of the Concessioner's Gross Receipts for the previous month, as defined in this Contract, into an interest bearing account(s) at a Federally insured financial institution(s). The account(s) shall be maintained separately from all other Concessioner funds and copies of monthly account statements shall be provided to the Secretary. An interest charge will be assessed on overdue deposits for each thirty (30) day period, or portion thereof, that the deposit is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the then current value of funds to the U.S. Treasury as published in the Treasury Fiscal Requirements Manual.

(b)(4) The Concessioner shall submit annually, no later than \_\_\_\_\_ of the year following the Concessioner's

accounting year a statement reflecting total activity in the Capital Account for the preceding accounting year. The statement shall reflect monthly credits, expenses by project, and the interest earned.

(b)(5) Advances or credits to the Capital Account by the Concessioner are not permitted. Projects will be carried out by the Concessioner as the Superintendent shall direct in writing and in advance of any expenditure being made. For all expenditures made for each project from Capital Account funds, the Concessioner shall maintain adaptable records including invoices, billings, canceled checks, and other documentation satisfactory to the Secretary.

(b)(6) Upon the expiration or termination of this Contract, or upon assignment or sales of interests related to this Contract, the unexpended balance remaining in the Capital Account shall be expended by the Concessioner for approved Projects, or, shall be remitted by the Concessioner to the Secretary in such a manner that payment shall be received by the Secretary within fifteen (15) days after the last day of the Concessioner's operation. Any payment consisting of \$10,000 or more shall be deposited electronically by the Concessioner using the Treasury Financial Communications System. An interest charge will be assessed overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15) day period provided for herein. The percent of interest charged will be based on the current value of funds to the United States Treasury which is published quarterly in the Treasury Fiscal Requirements Manual.

Sec. 11. Bond and Lien. The Secretary may, in his discretion, require the Concessioner to furnish a surety bond acceptable to the Secretary conditioned upon faithful performance of this Contract, in such form and in such amount as the Secretary may deem adequate, not in excess of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).<sup>10</sup> As additional security for the faithful performance by the Concessioner of all of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area.

<sup>10</sup> Note to Preparer: If a bond is required it should not, under normal conditions, exceed the amount of franchise fees which may be due. Leave blank where there has been no past operator because no dollar amount can be determined.

**Sec. 12. Termination.** (a)(1) The Secretary may terminate this Contract in whole or part for default at any time and may terminate this Contract in whole or part when necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety.

(a)(2) Operations under this Contract may be suspended in whole or in part at the discretion of the Secretary when necessary to enhance or protect Area resources or visitor enjoyment or safety.

(a)(3) Termination or suspension shall be by written notice to the Concessioner and, in the event of proposed termination for default, the Secretary shall give the Concessioner a reasonable period of time to correct stated deficiencies.

(a)(4) Termination for default may be utilized in circumstances where Concessioner has breached any requirement of this Contract, including, but not limited to, failure to maintain and operate accommodations, facilities and services to the satisfaction of the Secretary in accordance with the Secretary's requirements hereunder.

(b) In the event of termination or expiration of this Contract, the total compensation to the Concessioner for such termination or upon expiration shall be as described in Section 13 ("Compensation") of this Contract.

(c) In the event it is deemed by the Secretary necessary to suspend operations under this Contract in whole or in part to enhance or protect Area resources or visitor enjoyment or safety, the Secretary shall not be liable for any compensation to the Concessioner for losses occasioned thereby, including but not limited to, lost income, profit, wages, or other monies which may be claimed.

(d) To avoid interruption of services to the public upon the expiration or termination of this Contract for any reason, the Concessioner, upon the request of the Secretary, shall (i) continue to conduct all operations hereunder for a reasonable period of time to allow the Secretary to select a successor concessioner, or (ii) consent to the use by a temporary operator, designated by the Secretary, of Concessioner Improvements and personal property, if any, not including current or intangible assets, used in operations hereunder upon fair terms and conditions, provided that the Concessioner shall be entitled to an annual fee for the use of such improvements and personal property, prorated for the period of use, in the amount of the annual depreciation of such improvements and personal property, plus a return on the book value of such improvements and

personal property equal to the prime lending rate, effective on the date the temporary operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors or as agreed upon by the parties involved. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return.

**SEC. 13. Compensation.** (a) Just Compensation: The compensation described in this Section shall constitute full and just compensation to the Concessioner from the Secretary for all losses and claims occasioned by the circumstances described below.

(b) Contract expiration or termination where operations are to be continued:

(b)(1) If, for any reason, including Contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct operations hereunder, or substantial part thereof, and, at the time of such event the Secretary intends for substantially the same or similar operations to be continued by a successor, whether a private person, corporation or an agency of the Government; (i) the Concessioner shall sell and transfer to the successor designated by the Secretary its Possessory Interest in Concessioner Improvements and Government Improvements, if any, as defined under this Contract, and all other tangible property of the Concessioner used or held for use in connection with such operations; and, (ii) the Secretary will require such successor to purchase from the Concessioner such Possessory Interest, if any, and such other property, and to pay the Concessioner the fair value thereof.

(b)(2) The initial fair value of any Possessory Interest in Concessioner Improvements in existence before the effective date of this Contract shall be \$\_\_\_\_\_ as of the effective date of this Contract. This initial fair value amount shall annually decrease by \_\_\_\_\_<sup>11</sup> of this amount. In the event of Contract termination or expiration, the Concessioner's right to fair value for such Possessory Interest shall be the amount not yet so decreased. The fair value of any Possessory Interest in Government Improvements in existence

<sup>11</sup> In usual circumstances, the amount by which possessory interest will be reduced annually will be 1/60th (i.e., over 30 years). However, as our policy is to extinguish possessory interests as quickly as possible, taking into consideration the useful life of the facilities, a shorter period of time should be established when the economic conditions permit.

before the effective date of this Contract shall be the book value of the improvements as of the last day of the contract under which such Possessory Interest was obtained, subject to further reduction pursuant to the applicable depreciation schedule of such improvements.

(b)(3) The fair value of Possessory Interest in Concessioner Improvements and Government Improvements made after the effective date of this Contract shall be, unless calculated in accordance with section 13(d) hereof, the original cost of the improvements less straight line depreciation over the estimated useful life of the asset according to Generally Accepted Accounting Principles, provided, however, that in no event shall any such useful life exceed 30 years. In the event that such Possessory Interest is acquired by a successor, the successor will not be permitted to revalue such Possessory Interest, or, alter its depreciation schedule or useful life.

(b)(4) The fair value of merchandise and supplies shall be actual cost including transportation.

(b)(5) The fair value of equipment shall be its book value.

(c) Contract expiration or termination where operations are to be discontinued: If for any reason, including Contract expiration or termination as described herein, the Concessioner shall cease to be required by the Secretary to conduct operations hereunder, or substantial part thereof, and the Secretary at the time chooses to discontinue such operations, or substantial part thereof, within the Area, and/or to abandon, remove, or demolish any Concessioner Improvements, if any, then the Secretary will take such action as may be necessary to assure the Concessioner of compensation for (i) its Possessory Interest in Concessioner Improvements and Government Improvements, if any, in the applicable amount as set forth in Section 13(b) hereof; (ii) the cost to the Concessioner of restoring any assigned lands to a natural condition, including removal and demolition, (less salvage) if required by the Secretary; and (iii) the cost of transporting to a reasonable market for sale such movable property of the Concessioner as may be made useless by such determination. Any such property that has not been removed by the Concessioner within a reasonable time following such determination shall become the property of the United States without further compensation therefor.

(d) Contract Termination for Default for Unsatisfactory Performance. Notwithstanding any other provision of

this Contract to the contrary, in the event of termination of this Contract for default for failure to maintain and operate accommodations, facilities and services hereunder to the satisfaction of the Secretary in accordance with the Secretary's requirements, compensation for Possessory Interest in Concessioner Improvements, if any, except for Possessory Interest in Concessioner Improvements in existence before the effective date of this Contract, shall be as set forth in Section 13(b) hereof or at book value, whichever is less.

Sec. 14. Assignment, Sale or Encumbrance of Interests. (a) Pursuant to this section and 36 CFR part 51, the Concessioner and/or any person or entity which owns a controlling interest (as is or as may be defined in 36 CFR part 51) in a Concessioner's ownership, (collectively defined as the "Concessioner" for the purposes of this Section) shall not assign or otherwise sell or transfer responsibilities under this Contract or concession operations hereunder, or the Concessioner's assets in the concession operation, nor sell or otherwise assign, transfer or encumber (including, without limitation, mergers, consolidations, reorganizations, other business combinations, mortgages, liens or collateral) a controlling interest in such operations, this Contract, or a controlling interest in the Concessioner's ownership or assets (as is or as may be defined in 36 CFR part 51), without the prior written approval of the Secretary.

(a)(2) Such approval is not a matter of right and is further subject to the requirements of 36 CFR part 51 (as are or as may be set forth therein). The Secretary will exercise his discretion as to whether and/or under what conditions a proposed transaction will be approved in accordance with established policies and procedures.

(a)(3) Failure to comply with this provision or the procedures described herein shall constitute a material breach of this Contract for which this Contract may be terminated immediately by the Secretary without regard to the procedures for termination for default described in Section 12 hereof, and, the Secretary shall not be obliged to recognize any right of any person or entity to an interest in this Contract or to own or operate operations hereunder acquired in violation hereof.

(b) The Concessioner shall advise the person(s) or entity proposing to enter into a transaction which is subject to this Section that the Secretary shall be notified and that the proposed transaction is subject to review and approval by the Secretary. The Concessioner shall request in writing the

Secretary's approval of the proposed transaction prior to consummation and shall promptly provide the Secretary all relevant documents related to the transaction, and the names and qualifications of the person(s) or entity involved in the proposed transaction. The relevant documents shall be as described in 36 CFR Part 51 but shall also include other documents as the Secretary may require.

(c) The Concessioner may not enter into any agreement with any entity or person except employees of the Concessioner to exercise substantial management responsibilities for operations hereunder or any part hereof without the written approval of the Secretary given at least thirty (30) days in advance of such transaction.

(d) No mortgage shall be executed, and no bonds, shares of stock or other evidence of interest in, or indebtedness upon, the rights and/or properties of the Concessioner, including this Contract, in the Area, shall be issued without prior written approval of the Secretary. Approval of such encumbrances shall be granted only for the purposes of installing, enlarging or improving, plant equipment and facilities, provided that, such rights and/or properties, including possessory interests, or evidences of interests therein, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of other assignment, transfer, or encumbrance, the creditor or any assignee thereof, shall succeed to the interest of the Concessioner in such rights and/or properties but shall not thereby acquire operating rights or privileges which shall be subject to the disposition of the Secretary.

Sec. 15. Approval of Subconcession Contracts. All contracts and agreements (other than those subject to approval pursuant to Section 14 hereof) proposed to be entered into by the Concessioner with respect to the exercise by others of the privileges granted by this Contract in whole or part shall be considered as subcontracted contracts and shall be submitted in advance of execution to the Secretary for his approval and shall be effective only if approved. However, agreements with others to provide vending or other coin-operated machines shall not be considered as subcontracted contracts. In the event any such subcontracted contract or agreement is approved the Concessioner shall pay to the Secretary within \_\_\_\_\_ days after the \_\_\_\_\_ day of \_\_\_\_\_ each year or portion of a year a sum equal to Fifty

Percent (50%) of any and all fees, commissions or compensation payable to the Concessioner thereunder, which shall be in addition to the franchise fee payable to the Secretary on the gross receipts of subcontractors as provided for in Section 9 of this contract.

Sec 16. Insurance and Indemnity. (a)(1) General. The Concessioner shall save, hold harmless, defend and indemnify the United States of America, its agents and employees for losses, damages or judgments and expenses on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage or any nature whatsoever, and by whomsoever made, arising out of the activities of the Concessioner, his employees, subcontractors or agents under this Contract.

(a)(2) The types and amounts of insurance coverage purchased by the Concessioner shall be approved by the Secretary.

(a)(3) At the request of the Secretary, the Concessioner shall annually, or at the time insurance is purchased, provide the Secretary with a Statement of Concessioner Insurance and Certificate of Insurance as evidence of compliance with this section and shall provide the Secretary thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder.

(a)(4) The Secretary will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(b) Property Insurance. (b)(1) The Concessioner will, in the event of damage or destruction, repair or replace those buildings, structures, equipment, furnishings, betterments and improvements and merchandise determined by the Secretary to be necessary to satisfactorily discharge the Concessioner's obligations under this Contract and for this purpose shall provide fire and extended insurance coverage on both Concessioner Improvements and Government Improvements in such amounts as the Secretary may require during the term of the Contract. Those values currently in effect are set forth in Exhibit "E" to this Contract. This exhibit will be revised at least every 3 years, or sooner, if there is a substantial increase in value.

(b)(2) Such insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear. In the

ent of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concessioner Improvements and Government Improvements, equipment, furnishings and other personal property hereunder, as directed by the Secretary. The lien provision of Section 11 shall apply to such insurance proceeds.

The Concessioner shall purchase the following additional property coverages in the amounts set forth in Exhibit "E":

1. Boiler and machinery
2. Sprinkler leakage
3. Builders' risk
4. Flood
5. Earthquake
6. Hull
7. Extension-of-coverage endorsement

(c) Additional Property Damage Requirements—Government Improvements, Property and Equipment. The following additional requirements shall apply to structures all or any part of which are Government Improvements as defined in this Contract.

(c)(1) The insurance policy shall contain a loss payable clause approved by the Secretary which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States.

(c)(2) The use of insurance proceeds for repair or replacement of Government Improvements will not alter their character as Government Improvements and, notwithstanding any provision of this Contract to the contrary, the Concessioner shall gain no Possessory Interest therein.

(d) Public Liability. (d)(1) The Concessioner shall provide Comprehensive General Liability insurance against claims occasioned by actions or omissions of the Concessioner in carrying out the activities and operation authorized hereunder.

(d)(2) Such insurance shall be in the amount commensurate with the degree of risk and the scope and size of such activities authorized herein, but in any event, the limits of liability shall not be less than (\$\_\_\_\_\_) per occurrence covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Concessioner shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a Comprehensive General Liability Policy, may be used to achieve the required limits.

(d)(3) From time to time, as conditions in the insurance industry warrant, the Secretary reserves the right to revise the minimum required limits.

(d)(4) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America or shall provide that the United States of America is named an additional insured.

(d)(5) The Concessioner shall also obtain the following additional coverages at the same limits as required for Comprehensive General Liability insurance unless other limits are specified below:

- (1) Product Liability—Amount (\$\_\_\_\_\_)
- (2) Liquor Legal Liability—Amount (\$\_\_\_\_\_)
- (3) Protection and Indemnity (Watercraft Liability)—Amount (\$\_\_\_\_\_)
- (4) Automobile Liability—To cover all owned, non-owned, and hired vehicles—Amount (\$\_\_\_\_\_)
- (5) Garage Liability—Amount (\$\_\_\_\_\_)
- (6) Workers' Compensation
- (7) Aircraft Liability—Amount (\$\_\_\_\_\_)
- (8) Fire Damage Legal Liability—Amount (\$\_\_\_\_\_)
- (9) Other

Sec. 17 Procurement of Goods, Equipment and Services. In computing net profits for any purposes of this Contract, the Concessioner agrees that its accounts will be kept in such manner that there will be no diversion or concealment of profits in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

Sec. 18. General Provisions. (a) Reference in this Contract to the "Secretary" shall mean the Secretary of the Interior, and the term shall include his duly authorized representatives.

(b) The concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of the contract.

(c) Notwithstanding any other provision hereof, the Secretary reserves the right to provide directly or through cooperative or other non-concession agreements with non-profit organizations, any accommodations, facilities or services to Area visitors which are part of and appropriate to the Area's interpretive program.

(d) That any and all taxes which may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(e) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise herefrom but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

(f) This Contract may not be extended, renewed or amended in any respect except when agreed to in writing by the Secretary and the Concessioner.

In witness whereof, the parties hereto have hereunder subscribed their names and affixed their seals.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of 19 \_\_\_\_.

UNITED STATES OF AMERICA

By \_\_\_\_\_

Regional Director, National Park Service.

Corporations

Attest:

By \_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

(Concessioner)

By \_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_

Sole Proprietorship

Witnesses:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_  
Date \_\_\_\_\_

(Concessioner)

(Name)

(Title)

Partnership

Witnesses as to each:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

(Concessioner)

(Name)

(Name)

Date \_\_\_\_\_

**Exhibit "A"****Nondiscrimination****Section I—Requirements Relating to Employment and Service to the Public**

Concession Authorization No.:

A. Employment: During the performance of this Contract the Concessioner agrees as follows:

(1) The Concessioner will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, national origin or disabling condition. The Concessioner will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, national origin or disabling condition. Such action shall include, but not be limited to, the following: Employment upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Concessioner agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Secretary setting forth the provisions of this nondiscrimination clause.

(2) The Concessioner will, in all solicitations or advertisements for employees placed by or on behalf of the Concessioner, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, national origin or disabling condition.

(3) The Concessioner will send to each labor union or representative of workers with which the Concessioner has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Secretary, advising the labor union or workers' representative of the Concessioner's commitments under Section 202 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) Within 120 days of the commencement of a contract every Government contractor or subcontractor holding a contract that generates gross receipts which exceed \$50,000 or more and having 50 or more employees shall prepare and maintain an affirmative action program at each establishment which shall set forth the contractor's policies, practices and procedures in

accordance with the affirmative action program requirement.

(5) The Concessioner will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Concessioner will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the concessioner's books, records, and accounts by the Secretary of the Interior and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Concessioner's noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Concessioner may be declared ineligible for further Government concession contract in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Concessioner will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The Concessioner will take such action with respect to any subcontract or purchase order as the Secretary may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Concessioner becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Secretary, the Concessioner may request the United States to enter into such litigation to protect the interest of the United States.

B. Construction, Repair, and Similar Contracts: The preceding provisions A (1) through (8) governing performance of work under this Contract, as set out in Section 202 of Executive Order No. 11246, dated September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, shall be applicable to this Contract, and shall be included in all contracts executed by the Concessioner for the performance of construction, repair, and similar work contemplated by this contract, and for the purpose the term "Contract" shall be deemed to refer to this instrument and to contracts awarded by the Concessioner and the term "Concessioner" shall be deemed to refer to the Concessioner and to contractors awarded contracts by the Concessioner.

C. Facilities: (1) Definitions: As used herein: (i) Concessioner shall mean the Concessioner and its employees, agents, lessees, sublessees, and contractors, and the successors in interest of the Concessioner; (ii) facility shall mean any and all services, facilities, privileges, and accommodations, or activities available to the general public under this Contract.

(2) The Concessioner is prohibited from: (i) publicizing facilities operated hereunder in any manner that would directly or inferentially reflect upon or question the acceptability of any person because of race, color, religion, sex, age, national origin or disabling condition; (ii) discriminating by segregation or other means against any person because of race, color, religion, sex, age, national origin or disabling condition in furnishing or refusing to furnish such person the use of any such facility.

(3) The Concessioner shall post a notice in accordance with Federal regulations to inform the public of the provisions of this subsection, at such locations as will ensure that the notice and its contents will be conspicuous to any person seeking accommodations, facilities, services, or privileges. Such notice will be furnished the Concessioner by the Secretary.

(4) The Concessioner shall require provisions identical to those stated in subsection C herein to be incorporated in all of the Concessioner's contracts or other forms of agreement for use of land made in pursuance of this Contract.

**Section II—Accessibility**

Title V, Section 504 of the Rehabilitation Act of 1973, as amended in 1978, requires that action be taken to assure that any "program" or "service" being provided to the general public be provided to the highest extent reasonably possible to individuals who are mobility impaired, hearing

impaired, and visually impaired. It does not require architectural access to every building or facility, but only that the service or program can be provided somewhere in an accessible location. It also allows for a wide range of methods and techniques for achieving the intent of the law and calls for consultation with disabled persons in determining what is reasonable and feasible.

No handicapped person shall, because a Concessioner's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subject to discrimination under any program or activity receiving Federal financial assistance or conducted by any Executive agency or by the U.S. Postal Service.

#### Part A—Discrimination Prohibited

A Concessioner, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap:

1. Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

2. Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

3. Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

4. Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

5. Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to any agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or services

to beneficiaries of the recipient's program;

6. Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

7. Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving an aid, benefit, or service.

#### Part B—Existing Facilities

A Concessioner shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not require a Concessioner to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

#### Exhibit "B"

##### Land Assignment

*Note to Preparer:* The land assignment may be described in narrative form and, if possible, should include a map showing the area(s) to be assigned.

#### Exhibit "C"

Government-owned Structures (Government Improvements) Assigned to

(Concessioner)  
Pursuant To  
Concession Contract No.

Building No.	Description	Annual fee
		\$

Total amount due pursuant to subsection —  
Approved, effective

By:

Name of Concessioner

By \_\_\_\_\_  
Title \_\_\_\_\_  
United States of America

Regional Director

Region

Exhibit "D"

Pursuant to Subsection 6(a)(1)

*Note to preparer:* If the Concessioner has no Possessory Interest assets, put "NONE" on this page. You will ALWAYS use this EXHIBIT, either with a schedule of possessory interest assets, or with the words "NONE", but NEVER LEAVE THIS EXHIBIT OFF THE CONTRACT.

Exhibit "E"

Building Replacement Cost for Insurance Purposes

Concessioner:

Concession Contract No.: \_\_\_\_\_

The replacement costs set forth herein are established for the sole purpose of assuring property insurance coverage and shall not be construed as having application for any other purpose.

#### I. Government Buildings

Building No.	Description	Insurance replacement value <sup>1</sup>
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#### II. Concessioner Buildings

Building No.	Description	Insurance replacement value <sup>1</sup>
--------------	-------------	--

<sup>1</sup> or "Not to be replaced," where applicable.

By \_\_\_\_\_  
(Name of Concessioner)  
Title \_\_\_\_\_  
Date \_\_\_\_\_

United States of America

Regional Director

[FR Doc. 93-89 Filed 1-6-93; 8:45 am]

BILLING CODE 4310-70-01

# REPORT DOCUMENTATION PAGE

Form Approved  
OPM No.0704-0188

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources gathering, and maintaining the data needed, and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. AGENCY USE ONLY (Leave Blank)		2. REPORT DATE Oct 93	3. REPORT TYPE AND DATES COVERED Final
4. TITLE AND SUBTITLE  Contracting for Success: Developing Geothermal Resources on Military Lands; Volume II			5. FUNDING NUMBERS  C MDA903-90-C-0006 PE 0902198D
6. AUTHOR(S)  Robert W. Salthouse, William G. Stewart II, Lorna J. Tang, H. Locke Hassrick			
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES)  Logistics Management Institute 6400 Goldsboro Road Bethesda, MD 20817-5886			8. PERFORMING ORGANIZATION REPORT NUMBER  LMI- NA301R1
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)  Dennis M. Hannemann Division Director, Utilities Management Division Naval Facilities Engineering Command Room 10S02, Hoffman Building 2 Alexandria, VA 22332-2300			10. SPONSORING/MONITORING AGENCY REPORT NUMBER
11. SUPPLEMENTARY NOTES			
12a. DISTRIBUTION/AVAILABILITY STATEMENT  A: Approved for public release; distribution unlimited			12b. DISTRIBUTION CODE
13. ABSTRACT (Maximum 200 words)  This report presents findings on ways to contract for geothermal development on military lands. The report concludes that the Federal Acquisition Regulation is inapplicable and inappropriate for private geothermal development because such development does not use appropriated funds nor does it procure a supply or service. It recommends that the Navy develop a new legal instrument called a "license agreement," establish a demonstration project to test it, and reassign responsibility for geothermal contracting to a contracting office with the experience to respond flexibly and rapidly to geothermal development's unique requirements.			
14. SUBJECT TERMS  Geothermal, energy, contracting, Federal Acquisition Regulation, licensing, leasing.			15. NUMBER OF PAGES  287
			16. PRICE CODE
17. SECURITY CLASSIFICATION OF REPORT  Unclassified	18. SECURITY CLASSIFICATION OF THIS PAGE  Unclassified	19. SECURITY CLASSIFICATION OF ABSTRACT  Unclassified	20. LIMITATION OF ABSTRACT  UL